Stalking in the Netherlands

van der Aa, S.

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NATURE AND PREVALENCE OF THE PROBLEM AND THE EFFECTIVENESS OF ANTI-STALKING MEASURES

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Proefschrift

ter verkrijging van de graad van doctor aan de Universiteit van Tilburg op gezag van de rector magnificus, prof.dr. Ph. Eijlander, in het openbaar te verdedigen ten overstaan van een door het college voor promoties aangewezen commissie in de aula van de Universiteit op vrijdag 11 juni 2010 om 14.15 uur door

Suzan van der Aa

geboren op 11 maart 1982 te Tilburg

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One day, almost five years ago, when I was still working as a student-assistant for the criminal law department, Marc Groenhuijsen called me over to his office and asked me to find out whether someone in the Netherlands was already in the process of writing a thesis on stalking. While checking the internet, I remember thinking to myself: 'Damn the lucky bastard who gets to write on this topic!' You can imagine my joy and amazement when, on reporting back to Marc that I had not found any research of that nature, he immediately offered me the job. Although I had just decided that I wanted to prolong my relaxed life as a student, I was positive that a topic like stalking with its air of adventure and suspense would seldom come by. Naturally, I accepted the offer on the spot.

Consequently, the person who I am most grateful to is Marc Groenhuijsen. Not only has he shown an incredible confidence in me, but he has also given me full liberty to pursue my own ideas. I was only given a keyword 'stalking' and for four years I was free to do with it whatever I saw fit. I realise that this was a unique opportunity and that I will probably never find myself in such a luxurious position ever again. Furthermore, I am truly grateful for the way in which Marc has supervised me throughout the entire process. I have never come across a person who is so knowledgeable, but who at the same time is capable of putting criticism so gently and encouragingly. Each time I left his office I was inspired again.

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INTRODUCTION

One day a 36-year old woman called after she had read an interview with me on stalking in the newspaper.[1] In this – somewhat sensationalised – article I was said to have commented unfavourably on the police's way of dealing with stalkers and, because of this, the woman wanted to tell me her own story. By that time, I had heard so many horrific accounts of stalking victims that her experiences with an obsessed ex-boyfriend could not really amaze me anymore, even though the harassment involved repetitive, serious assaults and breaking and entering. The man was so persistent, that even her moving to the most southern part of the country in an attempt to escape had not stopped him. Instead of finding support with the police, she had been confronted with disbelief and belittlement. As a result of the stalking, she was now isolated from family and friends and she felt as if her life was at a standstill. Her hair had even turned grey due to the stress caused by the many incidents. In a poetic mood she had decided not to dye her hair until the harassment ended, although this was in contrast with her otherwise beautiful and youthful appearance. To her, the grey coiffure served as a symbol for her misery. By the time of the telephone call she had been grey for the last six years.

Delineation of the problem and research questions

There is no agreement on the exact definition of stalking,[2] but what it essentially boils down to is that someone is being deliberately, repetitively harassed by another person. This can happen through one and the same activity, but also through a variety of actions, such as following someone around, uttering threats, making unsolicited phone calls, sending unwanted e-mails, standing guard outside someone's house, ordering unwanted goods in the name of and at the expense of someone else, having funeral wreaths delivered, placing obituary notices, spreading false rumours, vandalising someone's house, damaging, destroying or replacing goods, instituting unfounded legal procedures, etcetera.[3] These activities do not necessarily have to be confined to the victim only. Family members, employers, colleagues, friends and acquaintances can also be targeted by the stalker.

Although stalking is an old behaviour, it took a long time before it was recognised as a criminal phenomenon in its own right. Only after some incidents had resulted in the physical

1 J. Schaafsma, 'Ex-commando's tegen stalkers. Politie laat bedreigde vrouwen in de steek', *De Telegraaf* 8 november 2007.

2 This definitional controversy will be elaborated on in Chapter 1.

3 These and other examples can be found in *Kamerstukken II* 1997/98, 25 768, no. 5, p. 1.

attack of two famous American actresses,[4] people became aware of the intrusiveness of the behaviour and the enormous consequences it could have for potential victims and their private lives. The state of California was the first to tackle the subject and in 1990 a specific criminal provision was created in order to deal with the problem more efficiently.[5] Within three years, the other fifty states and the District of Colombia followed suit through the enactment of special anti-stalking laws, thereby officially declaring stalking a crime and opening up the possibility of criminal prosecution.

In July 2000, the Dutch legislator created a criminal anti-stalking provision by inserting Article 285b into the Dutch Criminal Code (hereafter: DCC), but the law met with a lot of criticism.[6] This is not surprising, given that crime is a social construct.[7] However, where crimes such as murder or manslaughter are more or less universally recognised, the criminalisation of stalking is much more controversial. That drafting a law against stalking is not self-evident can be witnessed, for example, from the fact that many countries have explicitly decided to refrain from criminalising the behaviour.[8]

One of the main reasons that the criminalisation of stalking was criticised for was its lack of an empirical basis. Holtmaat, for instance, called the criminalisation of stalking a 'premature resort to criminal law', since it was unclear why the existent armamentarium did not work.[9] The alternative to combat stalking through civil law was not systematically discussed in Parliament and there had not been a systematic analysis of why the existing criminal law provisions, such as intimidation (Art. 285 DCC) or assault (Art. 300 DCC), had failed. In her opinion, the main cause for the ineffectiveness lay not in the absence of a specific stalking offence, but in the attitude of the police and the Public Prosecution Service who underestimated the seriousness of the problem and who thought it difficult to furnish proof. The enactment of a new offence would only cause victims to feel even more abandoned, for it would not take away the root cause of police inactivity.

Royakkers & Van Klink were also very critical about the criminalisation of stalking.[10] Although their remark, that the entire parliamentary debate did not shed any light on the necessity of criminalisation, was somewhat exaggerated, they were right in their assessment that many

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4 These actresses were Teresa Saldana, whose stalker stabbed her with a knife, and Rebecca Shaeffer, who even died as a result of the assault.

5 California Penal Code, Section 646.9.

6 Even the former Minister of Justice, Winnie Sorgdrager, was opposed to a criminal law solution against stalking (*Kamerstukken II* 1996/1997, 25 000 VI, no. 40). The members of the political party *VVD* and those of *Groen Links* had doubts as well (*Kamerstukken II* 1997/98, 25 768, no. 6, p. 3).

7 Crime is the result of a defining process in society (e.g. Th. de Roos, *Strafbaarstelling van economische delicten*, Arnhem: Gouda Quint 1987, p. 12). Mullen & Pathé explicitly mention that stalking is a new social construct (P.E. Mullen, M. Pathé & R. Purcell, *Stalkers and their victims*, Cambridge: Cambridge University Press 2009, p. 1).

8 For an overview of European member states that have not (yet) criminalised stalking, see: L. de Fazio, 'The legal situation on stalking among the European member states', *European Journal of Criminal Policy and Research* (15) 2009, pp. 229-242.

9 R. Holtmaat, 'Het wetsontwerp Belaging: een twijfelachtige oplossing voor een ernstig probleem', *Nemesis* (2) 1998, pp. 54-57. Royakkers & Van Klink also reproached the legislator for claiming that civil restraining orders were ineffective despite the absence of statistical data (L.M.M. Royakkers & B.M.J. van Klink, 'Drogredenen in het parlementaire debat. Het wetsvoorstel belaging als casus', *Nederlands Juristenblad* (17) 2000, pp. 351-357).

10 Royakkers & Van Klink (2000).

of the arguments used were specious or did not have any empirical basis. They furthermore questioned the effectiveness of a criminal law provision[11] and they feared that an arrest or prosecution might even backfire, with the stalker increasing his or her harassing efforts.

Since the legislator was aware of the (empirical) deficiencies too, an evaluation of the working of the law in practice was announced, which was to take place several years later.[12] However, to date – up to nine years after the enactment of Article 285b DCC – a proper evaluation is still lacking and the questions that arose during the discussion of the bill in Parliament are still very much alive today.[13] The underlying thesis will try to fill some of these blanks in our knowledge of stalking. Especially aspects that provoked much debate will be assessed.

The research questions were selected on the basis of the main problems that were raised in literature. When browsing through the numerous publications on stalking the same questions appeared over and over again. In the Netherlands, for example, there had never been a national inquiry into the prevalence and nature of the behaviour, a fact that several Dutch authors alluded to.[14] Still, a good anti-stalking policy is dependent on information on the extent and nature of the phenomenon.[15] This hiatus deserves to be looked into and, consequently, the first research question reads as follows:

1. What is the prevalence and nature of stalking in the Netherlands?

Another question that kept coming back was that of the effectiveness of criminalising the conduct.[16] Although America and the Netherlands clearly advocate the use of a criminal provision to counter stalking, it remains unclear whether criminal law is the proper instrument to address this conduct, since there is an absence of empirical evidence on the protective effects of contacting the police and a subsequent prosecution in cases of stalking. Still, the primary

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11 Members of the political parties *VVD* and *CDA* wondered about this as well (*Kamerstukken II* 1997/98, 25 768, no. 6, p. 10).

12 *Kamerstukken II* 1997/98, 25 768, no. 3, p. 12.

13 A study by Malsch, De Keijser & Rodjan into all the stalking cases that had been dealt with by the Dutch criminal justice system cannot be considered an effectiveness study, a fact that the authors themselves generously admit. Their evaluation was a 'process' evaluation, describing what was done, rather than an 'impact' evaluation to assess what effect the legal intervention had on stalking (M. Malsch, J.W. de Keijser & A. Rodjan, 'Het succes van de Nederlandse Belagingswet: groei aantal zaken en opgelegde sancties', *Delikt en Delinkwent* (36) 2006-8, pp. 855-869).

14 See, for example, R. Verkaik & A. Pemberton, *Belaging in Nederland. Aard, omvang, achtergronden en mogelijkheden voor een aanpak*, Leiden: Research voor beleid 2001, p. 22; D.W. de Jong, *Kom bij me terug, anders maak ik je af! Een verkennend onderzoek naar de aard en omvang van stalking in Nederland en knelpunten in de aanpak van dit misdrijf* (Master's thesis), Amsterdam: Vrije Universiteit 2005, p. 9; M. Malsch, *De Wet Belaging. Totstandkoming en toepassing*, Nijmegen: Ars Aequi Libri 2004, p. 22; L. Balogh, J. van Haaf & R. Römkens, *Tot hier en niet verder. De effectiviteit van AWARE in vergelijking met een 112+ aanpak van belaging*, Tilburg: IVA 2008, p. 10.

15 Verkaik & Pemberton (2001), introduction; T. Budd & J. Mattinson, *The extent and nature of stalking: Findings from the 1998 British Crime Survey*, London: Home Office 2000, p. 5.

16 See, for example, Malsch (2004), p. 73. Also C. Pelikan, 'Psychoterror. Ein internationales Phänomen und seine Gesetzliche Regelung' in: *Du entkommst mir nicht... Psychoterror. Formen, Auswirkungen und gesetzliche Möglichkeiten* (Konferenz Bericht), Wien: MA 57 2003, pp. 25-33; A. Groenen, *Stalking. Risicofactoren voor fysiek geweld* (diss.), Antwerpen: Maklu 2006, p. 213.

reason for the Dutch legislator to introduce Article 285b in the Dutch Criminal Code was to provide victims of stalking with an effective tool in the fight against their pursuers.[17] Despite the announcement that the law would be evaluated after a number of years to see how its enforcement works in practice,[18] it is still impossible to draw a definite conclusion on whether the criminalisation has had a positive effect on the prevention or reduction of stalking.

Next to effectiveness, there are more uncertainties about the workings of the law in practice. While many scholars and practitioners welcomed the introduction of a Dutch anti-stalking provision and applauded its numerous advantages,[19] others pointed out the possible disadvantages of criminal justice interference in cases of stalking. The lengthy processing time of cases, the strict evidentiary requirements and the danger of escalation were mentioned as drawbacks of a criminal law solution. However, most of the alleged advantages and disadvantages appeared in an assessment of the criminal justice system as opposed to civil restraining orders and they were usually based on general notions of law enforcement instead of empirical evidence. There had not been an empirical analysis of how victims and practitioners perceive the alleged (dis)advantages of a criminal justice solution in cases of stalking. As a result, the second question is:

2. ***How effective is the criminalisation of stalking in stopping or reducing the conduct and what are the (dis)advantages of a criminal justice solution in cases of stalking?***

It is also still debated whether the criminal law is the correct instrument to address stalking at all. Perhaps other approaches are more effective in fighting this crime. Since no thorough research had been conducted into the advantages and disadvantages of criminal prosecution to counter stalking, it was feared that other, possibly more effective, alternatives were not being given appropriate attention.[20] The legislator simply assumed that mediation, civil restraining orders, involuntary hospitalisation, or criminal prosecution on the basis of other crimes lacked the ability to adequately stop the stalker. A third goal of the thesis is to shed some light on the workings and the positive and negative side effects of two alternative approaches to combat stalking, namely hiring a private investigation or protection agency and obtaining a civil restraining order. In other words:

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17 *Kamerstukken II* 1997/98, 25 768, no. 3, p. 7. The initiators also mention a more retributive reason for the implementation of the new crime later on in the explanatory memorandum: '[With] the criminalisation of stalking the undersigned wish to emphasise that it involves a serious crime at the expense of others in society and that the stalker should be punished for his behaviour' (own translation of *Kamerstukken II* 1997/98, 25 768, no. 3, p. 12). Nevertheless, the cessation of the stalking and the protection of victims seem pivotal, given the repeated referral to these issues.

18 *Kamerstukken II* 1997/98, 25 768, no. 3, p. 12.

19 Amongst others: M.S. Groenhuijsen, 'Strafrecht als interventierecht', *Delikt en Delinkwent* (28) 1998-6, pp. 521-526; H.G.M. Krabbe & W. Wedzinga, 'Belaging in wetsontwerp 25768', *Delikt en Delinkwent* (28) 1998, pp. 215-232. Laméris-Tebbenhoff Rijnenberg even postulates that from the European Convention on Human Rights a positive duty can be derived to criminalise stalking (H.M.E. Laméris-Tebbenhoff Rijnenberg, *Dagvaarding en berechting in aanwezigheid. De Nederlandse betekeningsregeling in rechtshistorisch en Europees perspectief* (diss.), Amsterdam: Thesis Publishers 1998, position 9).

20 Holtmaat (1998).

3. ***How effective is hiring a private protection or investigation agency or obtaining a civil restraining order in the fight against stalking and what are the (dis)advantages of resorting to these anti-stalking measures?***

The answers to the three abovementioned questions will help fill in some of the blanks that surfaced during the social and scientific discourse on stalking. In the case of negative outcomes (the behaviour is not very prevalent, criminalisation is not effective in reducing the conduct, criminal law involvement has many drawbacks and only few advantages, etcetera) other jurisdictions may learn from the Dutch experience and perhaps refrain from drafting their own anti-stalking provisions. A negative outcome might also induce the Dutch legislator to reconsider its prior decision and perhaps remove stalking from the Criminal Code again.[21] If, however, the outcomes are positive, this may inspire foreign jurisdictions that have not yet criminalised stalking to take legislative action.[22] In that case, the Dutch legislator (legal) practitioners and victims can still profit from the results, because research has not only vindicated the legislator's decision to criminalise stalking, but, in doing so, it has also uncovered some of the problems that arise from applying the different anti-stalking measures. With the help of this information, victims can make a more informed assessment of the pros and cons of certain interventions as a basis for their decision to resort to them (legal) practitioners can adjust their approach to the problem, and policy makers can think of ways to improve the existent anti-stalking measures. This thesis will try to give them a head start by looking at some of the problems and by making suggestions for possible solutions. The final research question is therefore:

4. ***Is it possible to find a way to enhance the effectiveness and reduce (some of) the disadvantages of criminal law involvement, of obtaining a civil restraining order, or of hiring a private protection and investigation agency in cases of stalking?***

Elaboration of the central and sub-questions

The central research questions have to be further divided into more specific sub-questions. Before the effectiveness can be measured, for example, this term first has to be operationalised or defined into something that can be measured. In this study, an intervention is considered effective if it helps to decrease the frequency of stalking activities, if it forces the stalker to switch to less pervasive stalking methods, or if the victim's subjective well-being is improved because of the intervention. The latter can be measured by asking victims whether they felt better about themselves, whether they felt safer, and whether they felt more in control of the stalking thanks to a certain intervention.[23] The focus will mainly lie on the *perceived* effectiveness or, in other

21 Although a decriminalisation procedure seems rather theoretical.

22 Many countries are also hesitant to criminalise stalking, because they think that the most intrusive stalking activities, such as making threats, physical assault, or murder are already prohibited in their national Criminal Codes.

23 This approach was inspired by Keilitz et al.'s Well Being Index (S.L. Keilitz, P.L. Hannaford & H.S. Efkeman, *Civil protection orders: The benefits and limitations for victims of domestic violence*, Williamsburg: National Center for State Courts 1997).

words, what victims perceive as reducing the frequency or the intrusiveness of the stalking. The same goes for the (dis)advantages of a certain measure. Although the focus lies on the victim's point of view, another perspective that will be touched upon is the perspective of (legal) practitioners such as police officers and public prosecutors. Eventually, this resulted in the following sub-questions:

1) *What is the prevalence and nature of stalking in the Netherlands?*

   a. What are the demographic characteristics of stalkers and victims?
   b. What is the lifetime and last year victimisation rate?
   c. What stalking tactics do stalkers use?
   d. What are the consequences for the victims?

2) *How effective is the criminalisation of stalking in stopping or reducing the conduct and what are the (dis)advantages of criminal justice involvement in cases of stalking?* [24]

   a. What is the effect of criminal justice involvement on the frequency of stalking?
   b. What is the effect of criminal justice involvement on the nature of stalking?
   c. What is the effect of criminal justice involvement on the quality of life of the victim (feelings of safety, control, and well-being)?
   d. Are there correlations between effectiveness and other variables?
   e. What do victims perceive as (dis)advantages of criminal justice involvement?
   f. What do (legal) practitioners perceive as (dis)advantages of criminal justice involvement?
   g. How satisfied are victims with the criminal justice involvement?

3) *How effective is hiring a private protection and investigation agency or obtaining a civil restraining order in the fight against stalking and what are the (dis)advantages of resorting to those anti-stalking measures?*

   a. What is the effect of hiring a private protection and investigation agency or obtaining a civil restraining order on the frequency of stalking?
   b. What is the effect of hiring a private protection and investigation agency or obtaining a civil restraining order on the nature of stalking?
   c. What are the (dis)advantages of hiring a private protection and investigation agency or obtaining a civil restraining order?

4) *Is it possible to find a way to enhance the effectiveness and reduce (some of) the found disadvantages of criminal law involvement, of obtaining a civil restraining order, or of hiring a private protection and investigation agency in cases of stalking?*

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24 In this book, the term criminal justice involvement implies criminal justice in a broad sense, so the consequences of contacting the police (through filing a report or through a notification) regardless of whether or not this has led to criminal prosecution.

Research methods and methods of data collection

This book contains research questions of a very different nature with each of these questions requiring a particular approach. Answering the question of whether the contact with the police has had an effect on the frequency of the stalking requires a completely different research method than trying to establish how many Dutch women ever suffered from systematic unwanted harassment in their lives. The following quantitative and qualitative research methods were applied:

- *National population survey*: To estimate the prevalence and nature of stalking, the results of the 2001 Police Monitor *(Politiemonitor Bevolking)* – a biennial national population survey on crime, crime prevention, feelings of insecurity and the quality of police intervention – were analysed. The 2001 edition of the Police Monitor, which had over 88,000 respondents, contained a section on stalking, but its results had never been presented so far. In addition to the results of the Police Monitor, the findings of a survey carried out during the Tilburg Carnival in 2007 are presented as well. More than one thousand visitors filled out a questionnaire on unpleasant events, and stalking was one of the items.

- *Stalking victims' survey*: For a better understanding of the way stalking victims perceive the effectiveness and the (dis)advantages of criminal justice interference, a sample of stalking victims was selected from the files of Victim Support Netherlands and then asked to fill out a victims' survey. 356 Respondents complied with the request. The data that were collected in this manner were subsequently analysed and presented. At the outset, the idea was to have the same sample of victims fill out questions on their experiences with civil restraining orders as well. This would enable a comparison of the two legal interventions, for example, as regards their (perceived) effectiveness or the overall victims' satisfaction. However, after studying the results, it appeared that some of the victims who indicated that they had tried to obtain a civil restraining order had in fact mistaken the *civil* remedy for the *criminal* restraining order. This problem had not been observed during a prior pilot test of the questionnaire. As a consequence, the answers to the questions that evolved around civil restraining orders were not deemed reliable enough to be included in the book.

- *Semi-structured interviews with stalking victims*: The reaction of the criminal justice system to stalking is the focal point of the book. In order to gain a more in-depth understanding of the possible obstacles that stalking victims come across when they contact the criminal justice system, the victims' survey was supplemented with 45 qualitative semi-structured interviews with victims of stalking (20 Dutch victims, 25 Belgian victims). Victims who had indicated in their questionnaire that they were willing to participate in an interview were kept apart from the others and later on contacted by telephone. During these tape-recorded interviews the victims were asked, for example, whether they had experienced any difficulties in their contact with the criminal justice system that had not been covered by the survey. Furthermore, the interviewer asked about what additional needs they had had in contacting the criminal justice system and in what way the criminal justice system had responded to

their needs.

- *Semi-structured interviews with police officers and public prosecutors*: The focus of the book was mainly on the perspective of the victim, so questions like: 'How does the *victim* perceive the effectiveness of contacting the police?' or 'What does the *victim* perceive as important disadvantages?' lay at the heart of the thesis. This, however, does not mean that other perspectives were completely ignored. The main findings of the victims' survey and of the interviews with victims were presented to seven legal practitioners (four police officers and three public prosecutors) to give them an opportunity to react. This provided an explorative overview of how legal practitioners think about the difficulties with regard to stalking.

- *File research*: To gain insight into the workings and the effectiveness of the private protection and investigation agency, a file research was carried out. Twenty-six files of stalking cases that the cooperating agency had dealt with since its establishment in 2005 until 30 June 2007 were collected and content analysed. The content analysis of the files consisted of the close reading of all the selected files by the researcher followed by an interpretive narrative reflecting the working method of the agency and the effect it had had on the (frequency and nature of the) stalking. Given the modest sample size, the conclusions that are derived thereof are – again – only indicative or explorative.

- *Literature review*: Relevant literature on stalking or related topics such as domestic violence was selected and used throughout the book for various reasons such as to illustrate the emergence of stalking or to compare the Dutch prevalence numbers with foreign ones. Also, because of the unreliable answers to the victims' survey, information on the effectiveness and (dis)advantages of civil restraining orders was largely derived from other literary sources as well.

- *Legal research (interpretation of parliamentary history, case law, and literature):* Where the first three research questions were predominantly of an empirical nature, the fourth required a more traditional legal approach. Every time a problem or disadvantage of a certain intervention emerged, a legal analysis would follow to see whether the problem could be resolved or whether it was inextricably linked with the intervention. If, for instance, the costs of obtaining a civil restraining order are so high that they form a barrier for victims to resort to interlocutory proceedings then a legal analysis will make clear what these costs consist of and whether there are ways to reduce the financial burden for victims.

As can be witnessed from the above list, a variety of research methods was used and given that each method has its own specific limitations, it goes beyond the scope of this introductory chapter to explain all the possible limitations of each of these methods. This will be done in the separate chapters whenever a new method is introduced.

Demarcation of the subject problem

Overall the idea was to do research on the nature and prevalence of stalking in the Netherlands and on the effectiveness and (dis)advantages of certain legal anti-stalking measures, both criminal and civil. The combination of empiricism with legal reasoning makes the thesis multi-disciplinary. As a result, it will not be an abstract, theoretical account, but a concrete and practical study. The different research questions will hopefully yield results that practice can benefit from. However, there are certain limitations that need to be kept in mind.

The first restriction has to do with the definition of stalking that is used. In this book 'stalking' is defined as 'the unlawful, systematic intrusion upon a person's privacy' which is an abbreviated version of Article 285b DCC. In line with the parliamentary debates and with the Supreme Court's rulings, 'systematic' means with a certain nature, duration and frequency,[25] the element of 'intrusion' implies that the victim did not want the contact,[26] and 'a person's privacy' relates to the fact that the victim must have had a reasonable expectation of privacy.[27] This latter requirement is assessed by taking the average person as an objective standard. If the average person would think certain behaviour an infringement of privacy, then this constitutive element is fulfilled. 'A person's privacy' furthermore expresses that the intrusion is aimed at one person in particular.

The link with Dutch legislation and Dutch case law was chosen, because it is the Dutch situation that is evaluated. The reason why an abbreviated version was selected and not the entire provision was that Article 285b DCC has some extra constitutive elements ('intentionally' and 'with the aim of forcing that person to do something, to refrain from doing something, to tolerate something or to instill fear in that person') that can be considered redundant, as will be explained in Chapter 4.

On the one hand, the definition is broader and, on the other, narrower than some of the other definitions. The experience of fear as a result of the stalking was, for example, not considered a constitutive element of stalking. In line with the Dutch legal definition of stalking, it will only be one of the alternative consequences that the perpetrator must have aimed for.

Because of the complicated and open terminology, the definition was sometimes transposed into more common, non-judicial terms in surveys or interviews for reasons of clarity. People were, for example, interviewed on their experiences with being 'the target of persistent unwanted attention of another person (stalking)'. Inevitably, certain nuances were lost in translation. The implications for the interpretation of the results will be explained in each relevant chapter.

A second limitation is that the empirical part of the research has been restricted to the Netherlands only. The Dutch situation had not been a topic of much (empirical) research and it alone evoked so many time-consuming research questions that the initial idea to carry out

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25 See, for example, HR 1 juni 2004, *LJN* AO7066.

26 *Kamerstukken II* 1997/98, 25 768, no. 5, p. 16.

27 A.J.M. Machielse, 'Art 285b', in: J.W. Fokkens & A.J.M. Machielse (eds.), *T.J. Noyon, G.E. Langemeijer & J. Remmelink's Wetboek van Strafrecht*, Deventer: Gouda Quint 2006, supplement 137, considerations 13 to Article 285b DCC. Also: C.J. Nierop, *Liefdesverdriet en stalking. De reikwijdte van het belagingsdelict in Nederland en Amerika*, Tilburg: Celsus juridische uitgeverij 2008, p. 40.

research abroad[28] was quickly abandoned. The Netherlands was not only chosen because of the lack of information on the topic in this country, but also due to pragmatic considerations. Contacts with victim support organisations and public prosecutors or police officers were easily established and there was no language barrier. Only when reviewing the stalking literature, other countries were taken into account as well. This does not necessarily mean that the results cannot be interesting for foreign jurisdictions. On the contrary, the findings may also have a bearing on the decision making process in other countries that are still of two minds when it comes to the criminalisation of stalking.

The third restriction lies in the choice of private protection and civil restraining orders as the only alternative measures under investigation. From the numerous anti-stalking measures, these two were chosen for a variety of reasons. First of all, the effectiveness of certain measures, like the AWARE alarm system,[29] had already been the topic of thorough research.[30] For those measures, additional research seemed less urgent. But more importantly, because AWARE is only available to female victims of very serious stalking incidents, the outcome of an effectiveness evaluation would not be representative for the entire group of stalking victims, which is the focal group of the thesis. Besides, since AWARE is so deeply embedded within the criminal justice system it is indirectly considered in measuring the effectiveness of the criminal justice system as a whole.

Other alternative measures, such as mandatory psychiatric hospitalisation, are not applied very often, which complicated the collection of sufficient applicable cases. This was not the case for private protection and investigation, since a Dutch foundation, which specialises in stalking, voluntarily offered its cooperation, thereby greatly facilitating the data collection. In addition, stalking in combination with private protection is a topic that has never been investigated, which in itself justifies scientific attention.

In the case of civil restraining orders, some effectiveness studies had already been conducted, albeit mostly in the realm of domestic violence, which enabled some meta-analytic conclusions on their effectiveness. Furthermore, civil restraining orders are amongst the few alternative interventions that academics constantly refer to as in need of further investigation.

In line with other studies,[31] a final restriction is that persistent harassment experienced *during* a romantic relationship is excluded as well. If a boyfriend follows his partner around all day, if he poses threats or sends unwanted gifts while the relationship has not ended (yet), this will be considered a case of (psychological) domestic violence, not stalking. Although domestic violence and stalking are often interrelated, with violent partners turning into persistent stalkers after the break-up,[32] it was deemed necessary to distinguish the two phenomena, because the continuance of a relationship would add an extra confounding variable to the already complex

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28 For example, in Scotland, where it was decided not to criminalise stalking as such, but to criminalise the violation of civil restraining orders instead.

29 AWARE is an acronym that stands for Abused Women's Active Response Emergency.

30 Balogh et al. (2008), p. 12.

31 Mullen et al. (2009), p. 46.

32 The female victims of ex-partner stalking who report to the police often suffered from violence during the relationship (L.P. Sheridan, E. Blaauw & G.M. Davies, 'Stalking: Knowns and unknowns', *Trauma Violence Abuse* (4) 2003-2, pp. 148-162.

stalking problem. To begin with, the establishment of the undesirability of the behaviour raises more evidentiary difficulties and, once established, ending the stalking requires a completely different approach from the situation in which the victim has terminated the relationship. Where possible, the existence of a former (violent) relationship with the stalker was included in the surveys as a variable, so that possible differences between ex-partner stalkers and other stalkers could be explored.

Structure of the book

The book consists of four parts. Part I is an introductory part which starts with a description of the emergence of (the crime of) stalking, with the definition of stalking and with an overview of previous research into the different stalking tactics, victim and stalker profiles and consequences for the victims (Chapter 1). It is not meant as an exhaustive account of everything there is to know about stalking – there are much better books for that[33] – but it serves to give an impression of the current state-of-the-art of research in the field of stalking.

Part II of the book focuses on the nature and prevalence of stalking in the Netherlands. Here the results of two quantitative studies into the prevalence and nature of stalking in the Netherlands will be presented. Chapter 2 highlights the findings of a survey that was carried out during the Tilburg Carnival in 2007 and in Chapter 3 the results of the Police Monitor of 2001 will be presented.

Part III deals with stalking and the criminal justice system. In Chapter 4, an interpretation of the constituent elements of Article 285b DCC will be given. With the help of the parliamentary debates and case law, the meaning of open terms like 'systematically' or 'a person's privacy' will be explained. Chapter 5 contains the quantitative results of a victims' questionnaire on the effectiveness and the (dis)advantages of the Dutch criminal justice system. Next to descriptive statistics, certain significant relations between different variables, such as arrest and deterrence, will also be explored. To see whether there are additional (dis)advantages that are not covered by the questionnaire, 45 interviews with victims were held, the results of which can be found in Chapter 6. In order to give the criminal justice system the right to hear and be heard, the opinions of seven police officers and public prosecutors are also presented (Chapter 7). In Chapter 8, the results of Chapters 4-7 will be discussed with the help of a legal analysis. After the deficiencies of the criminal law approach have been identified, the question is what possibilities there are – through legal reasoning – to take away some of the disadvantages for the victims.

The final part (Part IV) is about alternative anti-stalking measures. Chapter 9 focuses on the effectiveness and (dis)advantages of the interference of private protection and investigation agencies in stalking cases and Chapter 10 deals with the same issues, but then with civil restraining orders in mind.

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33 For example, the literature review by Cupach & Spitzberg (W.R. Cupach & B.H. Spitzberg, *The dark side of relationship pursuit. From attraction to obsession and stalking*, Mahwah (NJ): Lawrence Erlbaum Associates 2004) or its 2007 follow-up that accumulates and describes much of the (Anglo-Saxon) stalking research carried out so far (B.H. Spitzberg & W.R. Cupach, 'The state of the art of stalking: Taking stock of the emerging literature', *Aggression and Violent Behavior* (12) 2007-1, pp. 64-86).

PART I
INTRODUCTION TO STALKING

CHAPTER 1

INTRODUCTION TO STALKING

1.1. Introduction

This chapter will serve as an introductory chapter into the emergence, definition, and characteristics of stalking. The use of the word stalking to describe and link together particular types of harassing behaviours is not self-evident. In fact, before the 1980s, virtually nobody had ever used the term except in the context of the hunting of animals. Still, the behaviours underlying stalking are as old as human history. With its sudden popularity at the end of the last century, culminating in its criminalisation in many countries, stalking is often referred to as 'the crime of the 90s'.[34] In the first section, it will be explained why stalking emerged as a major social problem in the last few decades.

Another aspect that is not self-evident is the definition of stalking. Ever since its emergence, stalking has been the topic of popular, legal and scientific debate.[35] What characterises these debates is the apparent lack of agreement on a definition of stalking, not only between the various disciplines, but also within the disciplines themselves. Almost each author defines the phenomenon in his or her own unique way. The second section will depict some of the most prevailing definitions, see what these definitions have in common, and elaborate on the definition that will form the basis of the underlying thesis.

In the final section, an overview will be given of the state-of-the-art of stalking research so far. Questions that will be touched upon include: 'What stalker typologies are there?', 'Who falls victim to stalking?' and 'What consequences does stalking have?'

1.2. The emergence of stalking

Stalking is 'persistent harassment in which one person repeatedly imposes on another unwanted communications and/or contacts'.[36] In its original meaning, 'stalking' is an English

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34 J. Boon & L. Sheridan (eds.), *Stalking and psychosexual obsession. Psychological perspectives for prevention, policing and treatment*, Chichester: John Wiley & Sons 2002, p. xxi; E. Finch, *The criminalisation of stalking: Constructing the problem and evaluating the solution*, London: Cavendish Publishing Limited 2001, p. 27; M. Goode, 'Stalking: Crime of the nineties?', *Criminal Law Journal* (19) 1995-1, pp. 21-31.

35 P.E. Mullen, M. Pathé & R. Purcell, *Stalkers and their victims*, Cambridge: Cambridge University Press 2009, pp. 5-7.

36 P.E. Mullen, M. Pathé & R. Purcell, 'Stalking: New constructions of human behaviour', *Australian and New Zealand Journal of Psychiatry* (35) 2001, pp. 9-16.

hunting term stemming from the 1400s which means 'the activity of hunting game'[37] and it is not hard to conceive how the image of a hunter, who stealthily follows and creeps up on a wild animal before killing it, was transposed to the situation in which one human being pursues another. Nevertheless, the origins of the behaviour itself can be traced back much further than the English term that eventually was attached to it. As many authors keep reminding their readers: stalking is a new word for old behaviour.[38]

The fact that the notion of unwanted pursuit is deeply embedded in our culture can be witnessed by the numerous representations of stalking(-like) behaviour in myth, literature, films, music, and (case) law, sometimes dating far back to antiquity. Kamir, for instance, recognised a stalking theme in the Mesopotamian myth of Lilith of 1000 BC[39] and – with some imagination – even the Trojan war can be construed as an example of stalking by proxy with Helen being stalked by the rejected Agamemnon.[40] In addition to mythology, there are also literary works that relate to stalking. Amongst the classics that have been interpreted in this fashion are Mary Shelley's *Frankenstein*,[41] Louisa May Alcott's *A long fatal love chase*,[42] and Shakespeare's 'dark lady' sonnets.[43] But also Dante's relentless pursuit of Beatrice and Petrarch's persistent stream of love letters to Laura – behaviours that were once viewed as romantic ideals – might nowadays fall under the heading of stalking.[44] A more recent reflexion of stalking can be found in the art of motion pictures and music. That many filmmakers are attracted to the subject matter of fear-inducing, obsessional love can be witnessed by movies such as *Play Misty for me* or *Fatal attraction*[45] and the song *Every breath you take* by The Police clearly demonstrates that the music industry is intrigued by persistent harassment as well.[46]

The first legal reactions to stalking also date back some centuries ago. One of the earliest accounts of a law against what we would nowadays call stalking can be found in the *Institutes* of Justinian of 535 AD. Title four of the fourth book deals with injuries or 'anything which is done without any right' and one of the enumerated injuries is 'constantly following a matron, or a

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37 W.R. Cupach & B.H. Spitzberg, *The dark side of relationship pursuit. From attraction to obsession and stalking*, Mahwah (NJ): Lawrence Erlbaum Associates 2004, p. 5. However, the roots of the word stalking may be traced even further back to the Old English *bestealcian* (to move or pursue stealthily), which in turn is derived from the Proto-Germanic *stalkojanan* (Online Etymology Dictionary, <www.etymonlin.com>).

38 Amongst many others: Mullen et al. (2001); Finch (2001), p. 27; J.R. Meloy, 'The psychology of stalking', in: J.R. Meloy (ed.), *The psychology of stalking. Clinical and forensic perspectives*, San Diego: Academic Press 1998, pp. 1-23 on p. 4.

39 O. Kamir, *Every breath you take: Stalking narratives and the law*, Ann Arbor, MI: University of Michigan Press 2001, pp. 19ff.

40 Mullen et al. (2001).

41 Kamir (2001), pp. 93ff.

42 J.R. Meloy (ed.), *The psychology of stalking. Clinical and forensic perspectives*, San Diego, CA: Academic Press 1998, preface; Finch (2001), p. 28.

43 G. Skoler, 'The archetypes and psychodynamics of stalking', in: Meloy (1998), pp. 85-112.

44 Mullen et al. (2001), p. 9.

45 Many more examples of movies from the first half of the twentieth century can be found in Kamir (2001) pp. 112ff and more contemporary examples on pp. 140ff.

46 Less cited songs that also could be interpreted from a stalking perspective are *One way or another* (Blondie) or *Ne me quitte pas* (Jacques Brel).

young boy or girl below the age of puberty'.[47] In *Dennis* v *Lane* (1704) and *R* v *Dunn* (1840), Finch found early examples of British case law that evolved around stalking-like behaviour.[48] Even though the details of *R* v *Dunn* – in which the defendant harassed a woman through letters, following her around and behaving aggressively towards the people who tried to prevent him from approaching her – caused Lord Denman to sigh that 'the law of England may be justly reproached with its inadequacy to repress the mischief, and obviate the danger, which the prisoner's proceedings render too probable', it would take another 157 years before specific anti-stalking legislation in the form of the Protection from Harassment Act would be passed in England.

The late recognition of stalking as a social problem is not unique to the English situation, for, in fact, the English were relatively quick in comparison to the other European countries in acknowledging the dangerous nature of the conduct. Some authors have wondered what factors caused stalking to emerge as a social problem in the last few decades after having lingered unnoticed in the public subconscious for centuries.[49] The general consensus is that stalking has always been a feature of interpersonal contact, but that the concept of stalking came into existence due to several social and cultural forces. One of the factors that made a significant contribution to the awareness of stalking as a social problem is the media, for it was not until 1976, when news reports referred to the serial killer Son of Sam as having 'stalked' his victims and to paparazzi as having 'stalked' Jacky Kennedy[50] that the term 'stalking' was first linked to the behaviour of unwanted pursuit. This term caught on to such an extent that by the 1980s serial killers, rapists, and celebrity assassins were commonly labelled 'stalkers'.[51]

The connotation of the term stalking has changed over the years. After analysing press reports on stalking that were published or broadcasted between 1980 and June 1994, Lowney & Best found that the typification of the term 'stalking' had evolved over the years.[52] In the period between 1980 and 1988, the term was used to label sexual harassment, obsessive following, and psychological harassment perpetrated predominantly by male ex-partners on female victims. The harassment and intrusiveness were characterised by the non-violent, persistent, pursuit of a (female) victim. Despite the coining of the term and the efforts of the women's movement, this sort of harassment received only little public attention. This changed between 1989 and 1991 when, in the wake of the murder of the famous American actress Rebecca Shaeffer by her stalker Robert Bardo, the typification of the word stalking shifted to 'celebrity stalking' or 'star stalking'. The case of Rebecca Shaeffer received much publicity and stalking became linked with the image of pursuit of the famous culminating in violence or death. The victims were now

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47 The Institutes of Justinian, Book IV, Title IV, section I. For the 1913 translation by J.B. Moyle see: <http://www.gutenberg.org/dirs/etext04/ijust10.txt>. Whenever a person had been injured in such a manner, he could choose between a civil remedy and a criminal indictment.

48 Finch (2001), p. 30.

49 For example, Mullen et al. (2001); A. Groenen, *Stalking. Risicofactoren voor fysiek geweld*, Antwerpen: Maklu 2006, p. 19.

50 Kamir (2001), p. 148.

51 Kamir (2001), p. 148.

52 K.S. Lowney & J. Best, 'Stalking strangers and lovers. Changing media typifications of a new crime problem, in: J. Best (ed.), *Images of issues: Typifying contemporary social problems*, New York: Aldine de Gruyter 1995, pp. 33-57.

typically celebrities who were being harassed by mentally disordered and obsessed fans. After 1992, with the help of the domestic violence lobby, the stalking rhetoric in the media returned again to the situation in which women were harassed by their male ex-partners. Stalking was redefined as a widespread form of domestic violence against women.[53] This time, the media portrayals of stalked women did raise high levels of public concern and this continued to be the case even when the phenomenon was expanded to encompass a wide range of harassing behaviours irrespective of the relationship between victim and perpetrator. The extensive media coverage of stalking cases together with the increased attention for domestic violence provided the right breedingground for stalking to emerge as a social problem.

In addition, Mullen et al. identified five social evolutions that took place in the last half of the twentieth century that may have attributed to the growing awareness of stalking as a social problem as well.[54] First of all, there was a greater public concern about privacy combined with an increased capacity of others to invade that same privacy. Owing to technological developments and an institutional tendency to keep track of certain types of (personal) information, vast databases on each individual came into existence. These databases were so elaborate and comprehensive that, according to Mullen et al., '[i]n the modern world we are not just potentially naked but transparent, should those with authority, or the covert skills, wish to expose us. With so little real privacy, the appearance of privacy becomes all'.[55] As a result, people became more sensitive to intrusion by others.

A second trend, that helped spur the manifestation of stalking as a social problem, was the evolution into a more individualistic society. With the dissolution of the communities in which people from the same neighbourhood automatically knew one another, people were increasingly surrounded by others about whom they had no knowledge. Along with this unfamiliarity came (with or without good reason)[56] an increased fear of strangers, feelings that were fostered by the private security industry. People had the perception that society had become more dangerous and that they needed to protect themselves against strangers.

A third cause lay in the increased tendency of the government to employ criminal law in reaction to social problems. To illustrate their point, Mullen et al. use the example of discrimination. Where previously non-criminalised alternatives such as positive discrimination in education were used to reduce the problems of African Americans, more recently, the emphasis had shifted to the creation and enforcement of the criminal offence of racism. The same analogy applies to stalking. Where previously 'failed relationships, social ineptitude, rudeness, and interpersonal vindictiveness' were private matters, now they were 'being transformed into the simplification of a criminal offence'.[57]

The fourth development that stimulated the recognition of stalking was the growing awareness that society harbours 'strange people'[58] such as the mentally ill, the intellectually disabled, and addicts. The reality of increased numbers of these individuals together with the

53 Lowney & Best (1995), pp. 42-43.

54 Mullen et al. (2009), pp. 13-14.

55 *Ibid.*, p. 13.

56 Groenen (2006), p. 23.

57 Mullen et al. (2009), p. 14.

58 *Ibid.*, p. 14.

perception that these disorders are precursors of impulsive and aggressive behaviour was threatening and made people more anxious.

As the final and most important reason, Mullen et al. mentioned the changing roles of women. Romantic relationships were more unstable than they used to be[59] and women were more able to decline unwanted advances or to break up an unsatisfactory relationship. This increased the risk of evoking disappointment and anger in the rejected suitor or ex-partner. Not only were women more assertive in refusing or terminating relationships, they were also more prominent in workplace or public environments. As equal or even higher-ranked employees, who were sometimes given preferential treatment through positive discrimination, women could not only inspire jealousy in their (male) colleagues, but they also became more accessible. With the increased risk of falling victim to unwanted attention also came an increased awareness of this risk.

All these factors combined primed the public and put pressure on politicians to take legislative action. The public outrage and extensive media coverage following the murder of Rebecca Shaeffer channeled the general feelings of unrest and in 1990, the first criminal anti-stalking legislation was a fact.

1.3. The definition of stalking

In order to investigate stalking, the problem first needs to be delineated. Almost every article or book on stalking begins with a definition of the phenomenon[60] and this thesis will be no exception, for the simple adage 'I know a stalker when I see one', does not meet academic standards. There is, however, an apparent disagreement on a definition of stalking in the literature.[61] This problem probably finds its origin in the fact that stalking can be made up of numerous different pursuit tactics, such as following a person around, making telephone calls, sending unwanted gifts, but it can also escalate into assault or sometimes even murder. Finch acknowledges that, since the behaviour 'ranges from the outwardly innocuous to the seriously criminal', it is almost impossible 'to find any common denominator to the conduct

59 Mullen et al. (2001). In a later study conducted by them, the growing mobility in sexual and emotional relationships is mentioned as one of the factors that caused an actual increase in the frequency of stalking (Mullen et al. (2009), p. 17). Mullen et al. argue that stalking not only gained attention because the behaviour was construed in a new way, but also because the behaviour actually became more prevalent (p. 21). Luberto is likewise of the opinion that the phenomenon seems to have increased (S. Luberto, 'Introduction', in: Modena Group on Stalking, *Female victims of stalking. Recognition and intervention models: A European study*, Milan: FrancoAngeli 2005, pp. 7-13, p. 9).

60 For example, Finch (2001), p. 11; Groenen (2006), pp. 37ff.

61 For example, Groenen (2006), p. 41; D. Westrup & W.J. Fremouw, 'Stalking behaviour: A literature review and suggested functional analytic assessment technology', *Aggression and Violent Behavior: A Review Journal* (3) 1998-3, pp. 255-274, p. 256; L. de Fazio & G.M. Galeazzi, 'Stalking: Phenomenon and research', in: Modena Group on Stalking, *Female victims of stalking. Recognition and intervention models: A European study*, Milano: FrancoAngeli 2005, pp. 15-36, p. 16ff; J.D.H. Jagessar & L.P. Sheridan, 'Stalking perceptions and experiences across two cultures', *Criminal Justice and Behavior* (31) 2004-1, pp. 97-119; M. O'Connor & B. Rosenfeld, 'Introduction to the special issue on stalking. Finding and filling the empirical gaps', *Criminal Justice and Behavior* (31) 2004-1, pp. 3-8; M. Malsch, *De Wet Belaging. Totstandkoming en toepassing*, Nijmegen: Ars Aequi Libri 2004, p. 11.

upon which to base a definition'.[62] Another intricate factor is that the existent definitions can be subdivided into definitions drawn up by (behavioural) scientists or psychiatrists for research or clinical purposes, and legal definitions, which serve criminal prosecution and which vary from jurisdiction to jurisdiction.[63] For each of these specific purposes, different definitions are created.[64] To complicate matters even further, various synonyms or close relatives for the word 'stalking' are in circulation, such as 'obsessional harassment',[65] 'criminal harassment',[66] 'obsessional following',[67] or 'obsessional relational intrusion'[68] and there is furthermore a tendency to distinguish sub-types of stalking such as cyberstalking[69] or celebrity stalking from the regular stalking cases.

1.3.1. Research definitions

A definition that is often cited is the one by Meloy and Gothard, who defined stalking or obsessional following as 'an abnormal or long-term pattern of threat or harassment directed toward a specific individual'.[70] The pattern of threat or harassment consists of 'more than one overt act of unwanted pursuit of the victim that was perceived by the victim as being harassing'. Even though 'more than one' seems hard to reconcile with a 'long-term pattern' the advantage of this definition is that, with some exceptions, it resembles many of the American statutory definitions of the offence of stalking.[71]

Meloy and Gothard's definition on several points parallels the one given by Pathé and Mullen, who conceptualised stalking as 'a constellation of behaviours in which one individual inflicts on another repeated unwanted intrusions and communications'.[72] As the most commonly experienced intrusions were mentioned 'following, loitering nearby, maintaining surveillance, and making approaches' and communications through 'letter, the telephone, electronic mail, graffiti or notes attached, for example, to the victim's car'.[73] The definition does not indicate what period of time should elapse or how many intrusions should have taken place before the

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62 Finch (2001), p. 11.

63 Meloy (1998), p. 2.

64 Cupach & Spitzberg (2004), p. 10.

65 B. Rosenfeld, 'Recidivism in stalking and obsessional harassment', *Law and Human Behavior* (27) 2003-3, pp. 251-265; B. Rosenfeld, 'Assessment and treatment of obsessional harassment', *Aggression and Violent Behavior* (5) 2000-6, pp. 529-549.

66 K.A. Morrison, 'Predicting violent behavior in stalkers: A preliminary investigation of Canadian cases of criminal harassment', *Journal of Forensic Sciences* (46) 2001-6, pp. 1403-1410; D. Crocker, 'Criminalizing harassment and the transformative potential of law', *Canadian Journal of Women and the Law* (20) 2008-1, pp. 87-110.

67 J.R. Meloy, 'Stalking (obsessional following): A review of some preliminary studies', *Aggression and Violent Behavior* (1) 1996-2, pp. 147-162.

68 Cupach & Spitzberg (2004), pp. 9ff.

69 P. Bocij, *Cyberstalking. Harassment in the internet age and how to protect your family*, Westport: Praeger 2004.

70 J.R. Meloy & S. Gothard, 'A demographic and clinical comparison of obsessional followers and offenders with mental disorders', *American Journal of Psychiatry* (152) 1995, pp. 258-263.

71 Mullen et al. (2009), p. 2.

72 M. Pathé & P.E. Mullen, 'The impact of stalkers on their victims', *British Journal of Psychiatry (*170) 1997, pp. 12-17.

73 Later on, this list of communicatory intrusions was complemented with the more recent phenomenon of 'texting' (Mullen et al. 2009, p. 2).

'constellation of behaviours' classifies as stalking. This changed in a subsequent publication, in which the authors suggested that at least ten separate intrusions and/or communications over a time frame of at least four weeks were needed to constitute stalking behaviour.[74] These latter limitations, albeit preferable from an empirical point of view, appear to be somewhat arbitrary. The authors explain that they were deliberately chosen to ensure that the sample group consisted unquestionably of stalkers only. According to Pathé & Mullen, the perceptions of the person who is the object of the unwanted attentions is central to the construction of stalking for '[i]t is not the intentions of the putative stalker that are the defining element, but the reactions of the recipient of the unwanted attention who, in the act of experiencing themselves as victimised, creates a stalking event'.[75] In their view, stalking creates 'apprehension' and 'can be understood by a reasonable fellow citizen (the ordinary man or woman) to be grounds for becoming fearful'.[76]

A final definition that is often referred to is the one by Westrup, who proposed to delineate stalking as 'one or more of a constellation of behaviours that (a) are directed repeatedly towards a specific individual (the target) (b) are experienced by the target as unwelcome and intrusive, and (c) are reported to trigger fear or concern in the target'.[77] The problem with this definition is that the 'fear' factor is not without controversy, since many legal or scientific definitions do not – or at least not exclusively – require the subjective feeling of fear. Instead of fear, some definitions necessitate the victim to have experienced agitation, irritation, or stress, while other definitions do not contain a serious reference to the victim's feelings at all.[78]

In an attempt to capture the variety of definitions by distinguishing the features they have in common, Groenen compared various definitions in her PhD thesis and discovered three elements that would be characteristic of stalking cases. According to her, stalking is generally seen as (1) repetitive behaviour (2) aimed at a specific person that (3) is unwanted by this person.[79] The latter element can be defined as annoying, threatening, fear-inducing, or disturbing the peace depending on the definition used.[80]

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74 P.E. Mullen, M. Pathé, R. Purcell & G.W. Stuart, 'A study of stalkers', *American Journal of Psychiatry* (156) 1999-8, pp. 1244-1249.

75 Mullen et al. (2009), p. 4.

76 *Ibid.*, p. 4.

77 D. Westrup, 'Applying functional analysis to stalking behavior', in: Meloy (1998), pp. 275-294, p. 276.

78 In the Dutch criminal provision, the experience of fear is not a constitutive element of the crime. It is only mentioned as one of the various consequences that the stalker may have aimed for.

79 Groenen (2006), p. 193.

80 Still, there are definitions that deviate from this generic summary. The Belgian criminal provision, for example, does not require the behaviour to be repetitive.

1.3.2. Legal definitions[81]

In 2007, a report was published that contained the results of a project aimed at collecting and analysing the legal regulations on stalking across the European member states[82] The report paints a picture of highly differentiated ways to tackle the problem of stalking across Europe. The differences already begin with the term 'stalking'. Where the American states at least share common words for the conduct, the – non Anglo-Saxon – European member states use native words or expressions that fully or only partially cover the concept of stalking. More importantly, in contrast to the United States, where all states have criminalised stalking, only eight out of the 25 European countries had a specific law against stalking at the time of the report. In the meantime, Italy has criminalised the conduct as well.[82] Of the seventeen countries that had not enacted an anti-stalking law in 2007, half indicated that they felt the need to pass one, but the other half did not think this was necessary.[83] These member states were satisfied with the existent legislation or society did not perceive stalking as a problem.

When focusing on the member states that have enacted specific laws to counter stalking, there is still an apparent lack of common ground. Many of the American laws were in one way or another based on or inspired by the Model Anti-Stalking Code,[84] thereby sharing certain common features, but the European countries could not depart from a model code. As a result, anti-stalking acts differ on various aspects: where the reaction of the victim is a qualifying element of the offence of stalking in the UK, Ireland, and Malta, it is not included in the definition of stalking in Austria, Belgium, and the Netherlands; where certain jurisdictions require the perpetrator to have had 'intent', others do not think this a constituent element of stalking at all, not even in the sense of 'general intent';[85] where Germany and Austria have clearly specified the

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81 This section is based on S. van der Aa, 'International (cyber)stalking: Impediments to investigation and prosecution', in: R.M. Letschert & J.J.M. van Dijk (eds.), *The new faces of victimhood: Globalisation, global justice and victim empowerment*, Dordrecht: Springer (in press).

82 For more information on Italian legislation, see: L. de Fazio, 'The legal situation on stalking among the European Member States', *European Journal on Criminal Policy and Research* (15) 2009-3, pp. 229-242.

83 The countries that felt the need to pass anti-stalking legislation were Italy, Portugal, Greece, Sweden, Finland, Cyprus and Luxembourg. The countries that did not feel this necessity were Estonia, Slovakia, Poland, Hungary, Lithuania, Spain and Slovenia (Modena Group on Stalking (2007), p. 12).

84 In 1993, before the majority of the states had drafted anti-stalking legislation, the National Institute of Justice developed a Model Anti-Stalking Code to encourage states to adopt anti-stalking measures themselves and to provide them with a template that was expected to withstand the anticipated constitutional challenges (National Criminal Justice Association, *Project to Develop a Model Anti-Stalking Code for States*, Washington D.C.: U.S. Department of Justice, National Institute of Justice 1993). As a result, many states incorporated provisions of the Code in their states statutes. According to Meloy, the American legal definitions of stalking generally have three elements in common: (1) a pattern (course of conduct) of unwanted behavioural intrusion upon another person; (2) an implicit or explicit threat that is evidenced in the pattern of behavioural intrusion; and (3) reasonable fear experienced by the person who is threatened as a result of these behavioural intrusions (Meloy 1998, p. 2).

85 A 'specific intent' crime means that the stalker intended to cause certain adverse reactions in the victim, such as fear of death or personal injury. A 'general intent' requirement implies that the stalker simply intentionally committed prohibited acts without necessarily intending the consequences of those actions. For more information on the division between 'specific intent crimes' and 'general intent crimes', see the National Center for Victims of Crime, *The Model Stalking Code Revisited: Responding to the New Realities of Stalking*, Washington, D.C.: National Center for Victims of Crime 2007, p. 32.

behaviours of the stalker that represent stalking, other jurisdictions make use of more generic definitions without an enumeration of the possible stalking acts; and where most member states will not define a conduct as stalking unless it consists of a course of conduct on at least two occasions, in Belgium and Malta, a single incident can suffice.

Certain differences only appear to be superficial. In Belgium, for example, nobody has ever been charged with or convicted of stalking because of one single incident.[86] Other differences, however, are more substantial. It appears as if two distinct models have emerged.[87] On the one hand, there is the model of the English-speaking countries with their emphasis on the reaction of the victim and, on the other hand, there is the continental European model which, especially in the most recent laws, seems to focus on the stalker's conduct and his or her intentions. In contrast to the UK, Ireland, and Malta, the reaction of the victim is not a qualifying element of the crime of stalking in Austria, Belgium, Germany, Denmark, and the Netherlands. These countries appear to place more emphasis on the types of behaviour and/or the intent of the stalker or on concepts such as privacy or the disturbance of the peace.[88] In other words, variations in legislation also appear to derive from even more substantial differences, namely, different opinions on what is so deviant about stalking behaviour and why it deserves punishment and criminalisation in the first place. The continental anti-stalking laws stand out for the great importance given to the right to privacy, whereas the Anglo-Saxon countries, with their emphasis on the anxiety of the victim, seem to take the right to live without fear as a justification for anti-stalking legislation.

These differences may become less apparent in the future. In the US, more and more states are adopting anti-stalking legislation in which the victim is no longer supposed to have suffered a certain level of fear – e.g. fear of bodily injury or death – but where it suffices if a reasonable person would suffer emotional stress as a result of the harassment. Furthermore, a number of courts have held that this emotional distress no longer needs to be proven by independent expert testimony.[89] It seems as if the focus on the mental effects on the victim is slowly sliding towards a more objective standard.

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86 This information was given to the author during a personal conversation with Wim d'Haese - a Belgian Chief of Police of the Leuven district. The criminal records that Groenen studied also consisted solely of behaviour that was repetitive (Groenen 2006, p. 194).

87 Modena Group on Stalking (2007), p. 69.

88 *Ibid.*, p. 70. Malsch also noticed that, in contrast to many Anglo-Saxon countries, Western European legislation generally does not contain the requirement that the stalker's intention had to be directed at the inducement of fear in the victim (Malsch 2004, p. 12).

89 National Center for Victims of Crime (2007), p. 48.

1.3.3. The current definition

As announced in the introduction, stalking is defined in this thesis as 'the unlawful, systematic, intrusion upon a person's privacy'. Not only is this definition in line with the legal definition of the country under investigation, namely, the Netherlands, but it also conforms to the aforementioned universally discernable development towards a more objective standard by leaving out the 'fear' element or other subjective feelings of the victim. Furthermore, the three generic elements that Groenen distinguished[90] are (implicitly) present in the current definition as well. The repetitive behaviour is absorbed by the element 'systematic', which, in fact, is a higher threshold than a mere repetition. Where repetitive behaviour means 'more than one',[91] 'systematic' means with a certain nature, duration and frequency.[92] So where two unwanted telephone calls directed at a specific person (theoretically) would constitute a stalking case in a definition that adopts the element of 'repetitive behaviour', the less serious nature of the conduct in combination with its short duration would probably prevent a conviction in a jurisdiction that takes on 'systematic' as a requirement. The stipulation that the behaviour is unwanted by the person being subjected to it is incorporated by the element 'intrusion upon' and although the requirement that the behaviour should be aimed at a specific person does not automatically follow from the chosen definition, it more or less follows from the element 'a person's privacy'. In Chapter 4, it will be argued that the exclusive focus on the victim should be taken into account, be it as an implicit element or as a factor of 'systematically' or 'a person's privacy'.[93]

However, the various research methods employed in this thesis will necessitate a different definition from time to time. As Van Duyne specifies, the core task of an empirical definition is that 'it has to determine the boundaries (finis) of something', in other words, 'a definition provides a decision rule, which determines whether any token will or will not be included in a certain set.'[94] As a result, undefined or open terms such as 'systematic' or 'a person's privacy', which are indispensable for a legal definition – for if they were not, perpetrators could easily circumvent the criminal provision – have to be operationalised or made concrete when the aim is to do statistical research.[95] In line with De Fazio's suggestions,[96] it is therefore inevitable to work with different definitions depending on the (research) goal one wishes to pursue.

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90 Groenen (2006), p. 193.

91 Meloy & Gothard (1995), pp. 258-263.

92 The different elements of the definition used will be elaborated on in Chapter 4 when the constituent elements of Article 285b DCC are discussed.

93 See Chapter 4, Section 4.3.7.

94 P.C. van Duyne, 'Definitie en kompaswerking', in: F. Bovenkerk, *De georganiseerde criminaliteit in Nederland: Het criminologisch onderzoek voor de parlementaire enquête-commissie opsporingsmethoden in discussie*, Deventer: Gouda Quint 1996, pp. 1-14.

95 In contrast to what Van Duyne suggests, it seems both unfeasible and undesirable to operationalise every criminal provision in this fashion. Although it would certainly be beneficial from the perspective of legal certainty, the risk that perpetrators could easily avoid criminal prosecution by staying within the boundaries is considerable. Nine death threats in three weeks, for example, would not constitute stalking under the definition as designed by Mullen et al. (1999). If, in order to prevent this, the net is cast as widely as possible in defining stalking, the operationalisation becomes meaningless again. Legal provisions, therefore, need a certain flexibility, whereas research definitions may require a more fixed definition.

96 De Fazio (2004), p. 17.

The more empirically based chapters will accordingly apply (slightly) deviant definitions, the consequences of which will be explained in the chapters themselves and in the final conclusion.

1.4. The characteristics of stalking

The abovementioned difficulties in defining stalking have a bearing on the comparability of the numerous scientific studies on this topic.[97] The percentage of persons that have fallen victim to stalking, for example, can rise or fall drastically according to the type of operational definition that is being employed.[98] Despite these wide variations, several trends or characteristics have emerged.

1.4.1. Stalker and victim characteristics

Thanks to several epidemiological studies the 'guesstimates'[99] that dominated early discussions on stalking have now been relegated to the world of fantasy. The idea that stalking was predominantly performed by deranged fans of celebrities, for instance, had to be discarded and even the studies that had the most restrictive criteria reported a significant proportion of the population as having been or still being affected by the conduct.[100] Another finding that is supported throughout the studies is that, in the general population, women are more likely than men to experience stalking.[101] Cupach & Spitzberg aggregated the statistical estimates of disparate studies by means of a descriptive meta-analysis[102] and they found a remarkable similarity across ten large-scale (> 1000 respondents) studies when it came to the gender of the victims: between 75% and 80% of stalking victims were female.[103] The perpetrators, by contrast, turned out to be predominantly of the opposite sex: on average 77% of the stalkers were male.[104] Research indicates that a relatively small proportion of the stalking cases involve same-gender stalking, but with estimates varying from 18% to 36% of all stalking cases,[105] the

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97 Groenen (2006), p. 52. Cupach & Spitzberg also state that studies are only occasionally comparable due to the different assessments, criteria and questions employed (Cupach & Spitzberg 2004, pp. 35-36).

98 See, for example, H. Dressing, C. Keuhner, & P. Gass, 'Lifetime prevalence and impact of stalking in a European population. Epidemiological data from a middle-sized German city', *British Journal of Psychiatry* (187) 2005, pp. 168–172; De Fazio, & Galeazzi (2005), pp. 15–36; C.E. Jordan, P. Wilcox, & A.J. Pritchard, 'Stalking acknowledgement and reporting among college women experiencing intrusive behaviors: Implications for the emergence of a 'classic stalking case'', *Journal of Criminal Justice* (35) 2007, pp. 556–569; N.J. Baas, *Stalking*, Den Haag: Ministerie van Justitie, WODC 2003, p. 1.

99 P. Tjaden & N. Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence against Women: Findings from the National Violence Against Women Survey*, Washington D.C.: U.S. Department of Justice, National Institute of Justice 2000, p. 18.

100 More information on prevalence studies and their outcomes will be given in Chapters 2 and 3.

101 See, for example, P. Tjaden & N. Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey*, Washington D.C.: U.S. Department of Justice, National Institute of Justice 1998.

102 For a description of their method, see Cupach & Spitzberg (2004), pp. 39ff.

103 *Ibid.*, p. 43. In the 2007 follow-up, Cupach & Spitzberg averaged the prevalence and incidence estimates across 175 (not all large-scale) samples. They then found that between 60% and 80% of the victims were female (B.H. Spitzberg & W.R. Cupach, 'The state of the art of stalking: Taking stock of the emerging literature', *Aggression and Violent Behavior* (12) 2007-1, pp. 64-86).

104 *Ibid.*, p. 48.

105 *Ibid.*, pp. 49-50.

studies are very inconsistent.

When it comes to the type of victim-offender relationship from which the stalking emerged, approximately one fifth of all stalking is perpetrated by complete strangers, but the stalking usually originates from a current or previous romantic relationship.[106] Other, less often reported relationships are those of neighbours, colleagues, fellow students, acquaintances, family members, or friends. [107] So, leaving aside possibilities of under- or over reporting, the victim profile that seems most prevalent is that of a woman who has previously had an intimate relationship with her usually male stalker.[108]

Furthermore, young persons are more at risk of becoming the victim of stalking than older people. The landmark study of Tjaden & Thoennes showed that 64% of the victims were younger than 30 years at the time when the stalking began and 12% of this category was a minor. Twenty-two percent of their sample was within the age category of 30 to 39-year-olds and approximately 15% was 40 years or over.[109] Other epidemiological surveys also found young people (under the age of 30) to belong to the most important high-risk groups.[110]

Other socio-demographic characteristics that were studied revealed that the civil status of respondents was related to the odds of stalking as well, with singles, separated, or divorced people facing the highest risks and married or widowed people the lowest.[111] Furthermore, students and unemployed people were also at greater jeopardy of ever becoming the victim of stalking,[112] as were health practitioners and public figures.[113]

Where the perpetrator is concerned, there is still no specific perpetrator profile. Various studies have shown that stalkers form a heterogeneous group of people stemming from all sections of the population, both rich and poor, of high and low education, employed or unemployed. An important caveat is that perpetrator characteristics are often derived from small, clinical or forensic samples, which influences the generalisability of the outcome,[114] or they are based on the assessment of the victim, which may have a bearing on the reliability of the results. Keeping these limitations in mind, stalkers are generally reported to be somewhat older than their targets: over half (51%) of the suspects fall within the age category of 20 to

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106 Studies vary somewhat on this point. In the National Violence Against Women survey, 52% of the victims were stalked by an ex-partner (Tjaden & Thoennes 1998). Yet the British Crime Survey of 1998 measured only 29% ex-partner stalking (T. Budd & J. Mattinson, *The extent and nature of stalking: Findings from the 1998 British Crime Survey*, London: Home Office 2000). Cupach & Spitzberg report an average of 48% across 47 studies (Cupach & Spitzberg 2004, p. 50).

107 Cupach & Spitzberg (2004), p. 50.

108 Mullen et al. (2009), p. 46.

109 Tjaden & Thoennes (1998), p. 6.

110 See, for example, R. Purcell, M. Pathé & P.E. Mullen, 'The prevalence and nature of stalking in the Australian community', *Australian and New Zealand Journal of Psychiatry* (36) 2002-1, pp. 114–120; S. Morris, S. Anderson & L. Murray, *Stalking and harassment in Scotland*, Edinburgh: Scottish Executive Social Research 2002, p. 35; K. AuCoin (ed.) *Family Violence in Canada: A Statistical Profile 2005*, Ottawa: Statistics Canada 2005, p. 37; Budd & Mattinson (2000), p. 10.

111 Budd & Mattinson (2000), p. 18.

112 *Ibid.*, p. 19.

113 Pathé & Mullen (2009), p. 35.

114 J.H. Kamphuis & P.M.G. Emmelkamp, 'Stalking: Een forensisch-psychiatrische benadering', *Tijdschrift voor Psychiatrie* (42) 2000-3, pp. 167-175.

39 years.[115] From a review of ten studies that were published between 1978 and 1995 on obsessional followers that were the subject of criminal justice investigations, Meloy distilled a tentative stalker profile.[116] Given that the studies involved non-random samples of convenience, the results are only indicative. Nevertheless, the data from these studies suggest that stalkers are typically single or divorced men in their mid to late thirties, often unemployed or underemployed, with prior psychiatric and criminal histories, whose love life is characterised by a history of failed heterosexual relationships.[117] The stalkers, furthermore, have a higher intelligence and are better educated than comparable non-stalking criminal populations.

Although the researchers who looked into the presence of mental disorders within the stalker population initially focused on erotomania, it turned out that this diagnosis is in fact very uncommon amongst stalkers.[118] Only 3% of Mohandie et al.'s non-random sample of 1005 stalkers suffered from this delusional disorder which causes the stalker to believe that the victim, usually of higher status, is in love with him or her. What does seem relatively prevalent amongst stalkers are other Axis I or Axis II diagnoses.[119] Although Douglas & Dutton admit that it is difficult to discern a pattern of results across studies of stalkers – studies which were, furthermore, often limited to forensic and psychiatric settings – they found that the Axis I disorders that seem the most prevalent are substance abuse and dependence, mood disorders such as depression and dysphoria, and psychotic disorders.[120] A more recent study amongst 78 adult stalking perpetrators who were court-ordered to receive outpatient psychological treatment, however, revealed that this group had a relatively low frequency and degree of psychopathology in comparison to other forensic samples.[121] The most likely Axis II diagnosis was a Cluster B personality disorder that was not an antisocial personality disorder.[122] Often stalkers had a personality disorder that was not otherwise specified, they had a developmental disorder, borderline, avoidant, paranoid, and schizoid personality disorders.[123] According to Kamphuis & Emmelkamp, personality disorders that were associated with stalkers were predominantly of a narcissistic and borderline nature, while avoidant, schizoid, and paranoid personality disorders are also prevalent, albeit to a lesser extent.[124]

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115 Budd & Mattinson (2000), p 26.

116 Meloy (1996).

117 The stalkers in Mullen et al.'s sample of 145 stalkers referred to a forensic psychiatry centre for treatment, on the contrary, had usually never had a previous intimate relationship (Mullen et al. 1999).

118 K. Mohandie, J. Reid Meloy, M. Green McGowan & J. Williams, 'The RECON typology of stalking: Reliability and validity based upon a large sample of North American stalkers', *Journal of Forensic Sciences* (51) 2006-1, pp. 147-155. Also K.S. Douglas & D.G. Dutton, 'Assessing the link between stalking and domestic violence', *Aggression and Violent Behavior* (6) 2001, pp. 519-546.

119 The Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association uses a five level system to classify, describe and diagnose mental illnesses and disorders. Axis I describes clinical disorders and developmental and learning disorders, Axis II personality disorders or mental retardation.

120 Douglas & Dutton (2001). As far as the substance abuse and the mood disorders are concerned, these findings are in line with those found by Meloy (1996). Meloy also found examples of schizophrenia in his literature review.

121 J.A. Reavis, E.K. Allen & J.R. Meloy, 'Psychopathy in a mixed gender sample of adult stalkers', *Journal of Forensic Sciences* (53) 2008-5, pp. 1214-1217. Also Meloy (1996) and Kamphuis & Emmelkamp (2000).

122 Douglas & Dutton (2001); J.R. Meloy (1996).

123 Douglas & Dutton (2001).

124 Kamphuis & Emmelkamp (2000)

1.4.2. Stalking tactics

The stalking tactics that are most frequently reported in victim surveys are following and spying on the victim (82% of female victims, 72% of male victims) or making unwanted phone calls (61% of female victims; 42% of male victims).[125] As disturbing as these tactics alone may already be, many victims indicated that the stalker did not stop there: 33% of the female victims and 27% of the male victims received unwanted letters or presents, 29% of the female victims and 30% of the male victims had their property vandalised, 45% of the female victims and 43% of the male victims received overt threats, and 9% of the female victims and 6% of the male victims had their pets killed or had received threats to that extent. Women who had been involved in an intimate relationship with their stalker also ran a high risk of becoming physically (81%) or sexually (31%) assaulted.[126]

Sometimes the stalking can even escalate into murder. There are very few reliable estimates as to the prevalence of stalking homicide, but when a woman is killed by her ex-partner, it appears that the murder is often foreshadowed by periods of stalking. In a study amongst female victims of (ex-)partner homicide, McFarlane et al. calculated that 76% of the murdered victims had been stalked by their (ex-)partners in the year previous to the fatal event.[127] The persistence with which stalkers can pursue their victims is witnessed by the finding that the average stalking case in the National Violence Against Women Survey lasted 1.8 years with victims of (ex-)intimate stalking generally having the longest stalking sequence (2.2 years versus 1.1 years for non-intimate stalking) and with 8% of the sample still experiencing ongoing harassment.[128]

1.4.3. The impact and consequences of stalking

Many aspects of victims' lives can be negatively affected by the stalking. In fact, Mullen & Pathé conclude that '[t]he psychological responses of victims of stalking have much in common with victims of other traumas, both man-made and natural'.[129]

Ninety-two percent of the respondents to the British Crime Survey who indicated they had been subjected to 'persistent and unwanted attention' perceived this behaviour as being irritating or annoying and 75% of the victims found the behaviour distressing or upsetting.[130] Furthermore, almost a third (31%) of the victims feared physical violence at the hands of the perpetrator and a substantial proportion of the victims (27%) feared physical violence directed towards third parties. Finally, 17% of the victims indicated that they feared sexual violence as well (23% of the women and 3% of the men).

Next to a psychological impact, stalking can also result in adverse life-style changes for the

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125 Tjaden & Thoennes (1998), p. 7.

126 *Ibid.*, p. 8.

127 J.M. McFarlane, J.C. Campbell, S. Wilt, C.J. Sachs, Y. Ulrich and X. Xu, 'Stalking and Intimate Partner Femicide', *Homicide Studies* (3) 1999-4, pp. 300-316.

128 Tjaden & Thoennes (1998), p. 12.

129 Mullen et al. (2009), p. 53.

130 Budd & Mattinson (2000), pp. 43ff.

victim. Of the 440 stalking victims in the National Violence Against Women survey who took self-protective measures, 22% took extra safety precautions, 17% obtained a weapon, 11% moved out of town, 7% avoided the stalker, and 7% never returned to work. In addition, 30% of the female and 20% of the male victims sought psychological help.[131]

Where these population studies described only assessed the impact on victims indirectly, a study by Pathé & Mullen focused specifically on the impact on the victims' psychological, social, and occupational functioning.[132] They examined the experiences of a non-random sample of 100 Australian victims of stalking who had been either recruited through the authors' forensic mental health clinic or who had contacted the authors themselves after a series of articles on stalking that had appeared in the media. Only the participants who had been affected by more than one form of intrusive behaviour for a period of at least four weeks were defined as stalking victims.

All the victims reported that the stalking had had a detrimental effect on their psychological, social, and/or occupational functioning. Ninety-four percent said that they had gone through major lifestyle changes and that they had changed their daily activities in a direct response to the stalking, usually involving the avoidance of places where they might encounter the stalker and the taking of security measures. Seventy percent of the victims diminished their social activities as a result of the stalking, over half the victims reported a decrease or a cessation of work or school attendance, 39% changed residence, and some even changed their names. Although only a third (37%) of the sample met all the diagnostic criteria for post-traumatic stress disorder (hereafter: PTSD), the majority of the victims (55%) reported experiencing one or more symptoms of PTSD. Eighty-three percent acknowledged an increased anxiety level as a consequence of the stalking, 65% had aggressive thoughts towards the perpetrator, and 75% had overwhelming feelings of powerlessness. Psycho-somatic symptoms were also mentioned regularly, with chronic sleep disturbance, appetite disturbances, excessive tiredness, weakness, and headaches as some of the examples. Finally, 23% of the victims reported an increase in their alcohol and/or cigarette consumption.[133]

Purcell et al. discovered with the help of a postal survey amongst Australians on the electoral roll that stalking that lasted longer than two weeks could be distinguished from stalking that lasted less than two weeks. Victims whose stalker desisted before the fourteen-day threshold

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131 Tjaden & Thoennes (1998), pp. 11-13.

132 Pathé & Mullen (1997).

133 Two, more recent, Dutch studies reported similar consequences. More than half of the 201 female victims of stalking in Kamphuis & Emmelkamp's study met the criterion for clinically significant pathology on the General Health Questionnaire and many had post-traumatic stress symptoms and/or had endured major lifestyle changes (J.H. Kamphuis & P.M.G. Emmelkamp, 'Traumatic stress among support-seeking female victims of stalking', *American Journal of Psychiatry* (158) 2001, pp. 795-798). Blaauw et al. also found high levels of psychopathology in their sample of 241 victims registered with the Dutch Anti-Stalking Foundation. No less than 31% reported suicidal thoughts (E. Blaauw, F.W. Winkel, E. Arensman, L. Sheridan & A. Freeve, 'The toll of stalking. The relationship between features of stalking and psychopathology of victims', *Journal of Interpersonal Violence* (17) 2002-1, pp. 50-63. In addition, a German random postal survey in the German city of Mannheim revealed that there was a strong relation between ever having been stalked and low levels of psychological well-being at the time of the survey (H. Dressing, P. Gass & C. Kuehner, 'What can we learn from the first community-based epidemiological study on stalking in Germany?' *International Journal of Law and Psychiatry* (30) 2007, pp. 10-17).

were less likely to suffer psychological and social impairment or significant changes to their daily life.[134] Contrary to general assumptions, the occurrence of violence was not an essential requirement for the detrimental effects on the victim.[135] Ironically enough, some victims reported that they would prefer a physical assault over the chronic, psychological nuisance.

1.4.4. The (perceived) motive for stalking

When victims were asked to indicate the motive with which the stalker pursued them, the exercise of control, the wish to initiate or restore a (prior) romantic relationship, and the instigation of fear were mentioned as the most important reasons for stalking. According to 21% of the stalking victims in the National Violence Against Women Survey the stalker wanted to control them, 20% thought that the stalker wished to keep the victim in the relationship, and 16% said that the stalker was mainly motivated by the desire to cause fear in the victim.[136] Other motives were having a mental disorder or substance abuse (7%), looking for attention (5%), and forcing the victim to do something (1%). Twelve percent of the victims had no idea for what reason they were being targeted.

Similar motives were found in the 1998 British Crime Survey. In this survey, 22% of the victims thought that the initiation of a relationship was what had induced the stalker, followed by the wish to upset or annoy the victim (16%), and the continuation of a relationship (12%). Twenty-one percent of the victims indicated that there was some other underlying motive and 20% did not know the motivation of the stalker.[137]

1.4.5. Stalking and domestic violence

Some authors have interpreted stalking specifically within the realm of domestic violence or violence against women.[138] Male stalkers would use stalking as a strategy of intimidation and control to force their female partners to remain in a relationship and there are some studies that indeed show a connexion between violent relationships and behaviours associated with

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134 R. Purcell, M. Pathé & P.E. Mullen, 'When do repeated intrusions become stalking?', *Journal of Forensic Psychiatry & Psychology* (15) 2004, pp. 571-583.

135 In a random community survey, Purcell et al. found that the rates of general psychiatric morbidity were not associated with the nature of the victimisation, such as the experience of associated threats and violence (R. Purcell, M. Pathé & P.E. Mullen, 'The association between stalking victimisation and psychiatric morbidity in a random community sample', *British Journal of Psychiatry* (187) 2005, pp. 416-420. They conclude that the fear and menace associated with threats may be more emotionally damaging to victims than the reality of physical harm. Blaauw et al. (2002) also found that the symptoms of psychopathology are largely independent of the actual features of the stalking experience.

136 Tjaden & Thoennes (1998), p. 8.

137 Budd & Mattinson (2000), pp. 28-29.

138 See, for example, F.L. Coleman, 'Stalking behavior and the cycle of domestic violence', *Journal of Interpersonal Violence* (12) 1997-3, pp. 420-432; A.C. Baldry, 'From domestic violence to stalking: The infinite cycle of violence', in: J. Boon & L. Sheridan (eds.), *Stalking and psychosexual obsession. Psychological perspectives for prevention, policing and treatment*, Leicester: John Wiley & Sons, pp. 83-104; A.W. Burgess, T. Baker, D. Greening, C.R. Hartman, A.G. Burgess, J.E. Douglas & R. Halloran, 'Stalking behaviors within domestic violence', *Journal of Family Violence* (12) 1997, pp. 389-403.

stalking such as following, surveillance, or posing threats. Tjaden & Thoennes found that 16.5% of the 1,785 police reports on domestic violence they had examined contained accounts of stalking[139] and 30% of Burgess et al.'s sample of 120 persons who had been charged with domestic violence and were attending a treatment program admitted to stalking their partners.[140] Furthermore, 81% of women who were stalked by a current or former partner had been physically assaulted by their pursuer whilst still in the relationship and 31% reported prior sexual assaults.[141] Also, 29% of Mechanic et al.'s sample of women who had separated from their abusive partner considered themselves as having been stalked within the past month.[142]

Although the focus on domestic violence as the main context of stalking was once very helpful in raising awareness of the problem of stalking,[143] authors now agree that studying stalking in all its forms – including non-intimate stalking and including male victims and female perpetrators – is a more useful approach.[144] It is true that a link between stalking and concurrent or preceding interpersonal violence exists, but this is far from a one-to-one correspondence.[145] There is a much wider range of both victims and offenders. Not all violent partners employ stalking tactics *during* the relationship, not every intimate relationship that turns sour afterwards was violent *before the break-up*, and there are ample examples of very severe stalking cases in which there was *no prior romantic involvement at all*. Making a distinction between stalking and domestic violence not only prevents certain (male or non-intimate) victims from falling under the radar of the police or other institutions that can provide them with resources to cope with their problem, but it also makes it possible to design specific anti-stalking measures which are probably not effective when the stalker and his or her target continue their relationship.[146]

Of course, taking into account a former (violent) relationship between perpetrator and stalking victim can still have a function, for example, for the design of a solid stalking typology and the subsequent creation of effective anti-stalking measures: saying that domestic violence should be distinguished from stalking is not the same as saying that the former stalker-victim relationship has no meaning at all in the stalking context. On the contrary, violent ex-partners who resort to stalking in general appear to be more persistent and more violent than other stalkers.[147] Significant relationships still need to be explored, but stalking is too heterogeneous a phenomenon to take the domestic violence paradigm as the leading principle.

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139 P. Tjaden & N. Thoennes, 'The role of stalking in domestic violence crime reports generated by the Colorado Springs Police Department', *Violence and Victims* (15) 2000-4, pp. 427-441.

140 Burgess et al. (1997).

141 Tjaden & Thoennes (1998), p. 8.

142 M.B. Mechanic, T.L. Weaver & P.A. Resick, 'Intimate partner violence and stalking behaviour: Exploration of patterns and correlates in a sample of acutely battered women', *Violence and Victims* (15) 2000-1, pp. 443-458.

143 See Section 1.2.

144 For example, Mullen et al. (2009), p. 59.

145 Cupach & Spitzberg (2004), p. 57.

146 For example, Mullen et al. (2009), p. 59.

147 In Tjaden & Thoennes' sample, the average duration of the stalking was much longer for (ex-) intimate stalking than for other forms of stalking (Tjaden & Thoennes 1998, p. 12) and the victims of ex-partner stalking in the study by Pathé & Mullen were more likely to suffer from physical violence than other victims (Pathé & Mullen 1997).

1.4.6. Stalking typologies

Several attempts have been made to categorise stalkers into so-called stalking typologies. A good stalking typology can assist in predicting the nature and duration of the stalking or the risks of escalation and can help find the most effective intervention to counter the behaviour;[148] therefore it is not surprising that the development of such a typology has received a great deal of academic attention. Mohandie et al. identified no less than twelve published classifications of different patterns of stalking behaviour all based on different criteria.[149] Some are, for example, founded on the (inferred) motivation of the stalker,[150] on the underlying psychiatric problems,[151] on the level of risk,[152] or on the degree of the previous relationship between the stalker and the victim.[153] Others use a combination of factors.[154] However, not a single one of these typologies has been universally accepted by all the professionals in the field of stalking.[155]

A well-known and often referenced typology is the one proposed by Zona et al., which is based on the combination of mental health diagnoses, stalker motivation, and stalker-victim relationship.[156] They divide obsessional subjects into erotomanics (persons who hold the delusional belief that their victim is in love with them), love obsessionals (persons with or without erotomania who (also) suffer from other delusions and psychiatric symptoms), and simple obsessionals (persons who wish to re-establish a relationship or who seek revenge). Mullen et al. use context and motivation to classify the stalking reality, resulting in five different types of stalkers: 1) the rejected suitor, who stalks after the termination of a relationship and who looks for reconciliation or revenge; 2) the intimacy seeker, who out of loneliness pursues another person to establish a relationship and who remains hopeful that intimacy will be obtained; 3) the incompetent suitor, who looks for a partner, but makes contact in such an inept manner as to cause irritation, anger, and eventually fear; 4) the resentful suitor, who is motivated by the desire for retribution after a (perceived) injustice; and 5) the predatory stalker, who, in the context of

148 Mullen et al. (1999).

149 Mohandie et al. (2006).

150 L. Sheridan & J. Boon, 'Stalker typologies: Implications for law enforcement', in: J. Boon & L. Sheridan (eds.), *Stalking and psychosexual obsession. Psychological perspectives for prevention, policing and treatment*, Chichester: Wiley & Sons 2002, pp. 69-81; Mullen et al. (1999).

151 K.K. Kienlen, D.L. Birmingham, K.B. Solberg, J.T. O'Regan & J. Reid Meloy, 'A comparative study of psychotic and non-psychotic stalking', *Journal of the American Academy of Psychiatry and the Law* (25) 1997-3, pp. 317-334.

152 K. Del Ben & W. Fremouw, 'Stalking: Developing an empirical typology to classify stalkers', *Journal of Forensic Sciences* (47) 2002-1, pp. 152-158.

153 R.E. Palarea, M.A. Zona, J.C. Lane & J. Langhinrichsen-Rohling, 'The dangerous nature of intimate relationship stalking: Threats, violence, and associated risk factors', *Behavioral Sciences and the Law* (17) 1999-3, pp. 269-283.

154 For example, Harmon et al., who not only took the prior victim-offender relationship into account, but also the motives behind the harassment (R.B. Harmon, R. Rosner & H. Owens, 'Sex and violence in a forensic population of obsessional harassers', *Psychology, Public Policy and Law* (4) 1998, pp. 236-249). Other examples of multi-faceted typologies are: J.A. Wright, A.G. Burgess, A.W. Burgess, A.T. Laszlo, G.O. McCrary & J.E. Douglas, 'A typology of interpersonal stalking', *Journal of Interpersonal Violence* (11) 1996-4, pp. 487-502; J.C.W. Boon & L. Sheridan, 'Stalker typologies: A law enforcement perspective', *Journal of Threat Assessment* (1) 2001-2, pp. 75-97.

155 Sheridan & Boon (2002), p. 64.

156 M.A. Zona, K.K. Sharma & J. Lane, 'A comparative study of erotomanic and obsessional subjects in a forensic sample', *Journal of Forensic Sciences* (38) 1993-4, pp. 894-903.

sadistic sexuality, stalks in preparation of a physical or sexual assault on the victim.[157]

The problem with these and other typologies is that many are based on theoretical models instead of empiricism.[158] When verification with reality is attempted, the conclusions are often based upon relatively small clinical or forensic samples, which limits their generalisability.[159] Furthermore, many of them use criteria that either overlap (erotomania in Zona's typology is both a psychiatric disorder and a category of stalkers), incomplete (stalkers that act out of revenge are not covered by Zona's typology), or they are too unstable to serve as a decision rule, which determines whether a stalker belongs to a certain category.[160] During the period of one stalking episode, a stalker can, for example, transition from Mullen's incompetent category to the rejected category and back.

A typology that does not suffer from overlap or mutable categories and that is tested empirically for its (interrater and temporal) reliability and its discriminant validity is the one proposed by Mohandie et al.[161] Their typology, which they have termed RECON, is based upon the prior relationship between the stalker and the victim (prior relationship versus no prior relationship) and the context in which the stalking occurs (stalking of a public figure versus stalking of a private figure). With the 'previous relationship' category being further subdivided into intimate (e.g. marriage, cohabiting, sexual) and non-intimate (e.g. employment-related, friendship, client), this typology yields four groups:

1) Intimate (prior intimate relationship),
2) Acquaintance (prior non-intimate relationship),
3) Public Figure (pursuit of a public figure victim, no prior relationship), and
4) Private Stranger (pursuit of a private victim, no prior relationship).

In comparison with the three other groups, the *intimate* stalker was the most malicious, being the type most likely to engage in personal violence toward the object of pursuit. Celebrities or other public figures, on the other hand, run a low risk of being physically assaulted by their harassers. However, if violence does occur, the injuries tend to be more serious. In accordance with other studies, the results show: that the majority of stalkers directly threaten their target, with the exception of *public figure* stalkers; that third party violence is unusual; that ending a relationship and physical proximity to the victim are associated with personal violence; and that psychosis appears to be negatively associated with violence risk. Mohandie et al. conclude that the distinctive differences between the behavioural patterns of the four groups warrant a different risk management approach with much emphasis on intensive probation or parole supervision in the case of *intimate* stalkers, a combination of law enforcement and mental health treatment for *acquaintance* and *private stranger* stalkers and the need for professional protection of the *public figure* victim.

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157 Mullen et al. (1999).

158 Del Ben & Fremouw (2002).

159 Mohandie et al. (2006).

160 *Ibid.*

161 *Ibid.*

1.4.7. Risk assessment

A line of study that is strongly related to the development of stalker typologies is the study into risk factors that predict escalation from stalking into physical violence. As has been shown, violence is one of the things that victims of stalking fear most. It is not surprising then, that several researchers have devoted their time and attention to identifying risk factors that are connected with physical violence. By identifying these predictors, it becomes possible to discover high risk groups and develop risk assessment instruments which can, for example, help practitioners recognise those stalking victims who are most in danger of being physically attacked. Resources could, in turn, be assigned to them with higher priority.

Although there are various ways to study risk factors, in stalking literature, only retrospective studies are available.[162] In his 2004 meta-analysis of 10 studies on stalking, Rosenfeld identified the following factors that were significantly related to future violence: stalking by an ex-partner, making threats to the victim, previous use of violence, a criminal history, substance abuse, absence of a psychotic disorder, and presence of a personality disorder.[163] In a later study by Rosenfeld & Lewis, these factors were supplemented by the young age of the perpetrator (<30 years), low education of the perpetrator, a motive of revenge, a lower than average intelligence, a male perpetrator, a female victim, and stalking more than one victim.[164]

However, given the methodological limitations of the two aforementioned studies,[165] additional research was necessary. On the basis of a logistic regression on the data from 204 police reports of stalking cases in which there had been a decision on the level of the Public Prosecution Service (e.g. dismissal, settlement, mediation or prosecution), Groenen detected five possibly important, interacting predictors of physical violence in stalking cases. These are: threats in combination with vandalism, threats in combination with stalking of an ex-partner, substance abuse in combination with stalking of an ex-partner, substance abuse in combination with vandalism, and a previous conviction for interpersonal violence.[166]

A discriminant analysis of 103 Canadian cases of stalking revealed that the physically violent stalker is more likely to (a) have a stronger previous emotional attachment toward the victim; (b) be more highly fixated on or obsessed with the victim; (c) have a higher degree of perceived negative affect towards the victim; (d) engage in more verbal threats toward the victim; and (e) have a history of battering or domestic abuse of the victim.[167]

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162 Groenen (2006), p. 99.

163 B. Rosenfeld, 'Violence risk factors in stalking and obsessional harassment. A review and preliminary meta-analysis', *Criminal Justice and Behavior* (31) 2004-1, pp. 9-36.

164 B. Rosenfeld & C. Lewis, 'Assessing violence risk in stalking cases: A regression tree approach', *Law and Human Behavior* (29) 2005-3, pp. 83-100.

165 For a critical evaluation of both studies, see Groenen (2006), pp. 109-115.

166 Groenen (2006), p. 178.

167 K.A. Morrison, 'Differentiating between physically violent and nonviolent stalkers: An examination of Canadian cases', *Journal of Forensic Sciences* (53) 2008-3, pp. 742-751.

1.5. Conclusion

Ever since the 1980s, the notion that the relentless pursuit of an individual against his or her wishes is not necessarily a legitimate expression of love or hatred has become widespread. With some high-profile cases that served as a catalyst, the changed perceptions of, *inter alia*, the right to privacy and the role of women in society expressed itself in the awareness of the immoral nature of the behaviour and the devastating effects which persistent, unsolicited attention could have on the people subjected to it. Even if the stalking does not result in direct physical harm, the consequences on the victim's mental health can be severe and long-lived. In reaction to this awareness, many countries have enacted a specific anti-stalking provision in their domestic Criminal Codes or they have reinforced the existent civil solutions. Other countries, on the other hand, are either still contemplating whether stalking is really that reprehensible or social and academic debate has not even begun to explore the topic of stalking or criminal harassment.

A subject that is equally disputed is how to define the behaviour. With definitions ranging from stalking that consists of at least ten incidents in more than one month to almost all-encompassing descriptions in which two incidents suffice and in which the victim does not even have to have experienced fear as a result of the stalking, it is hard to see the wood for the trees. Definitions seem to be influenced by the context from which they originate and, given the divergent goals of scientific and legal definitions, it is an illusion to think that one, universally accepted definition could ever be formulated. Accordingly, some variation in definitions is unavoidable, but each definition should at least express the repetitiveness of the behaviour, the focus of the behaviour on a specific person and the fact that the behaviour is unwanted by this person. It is its repetition and persistence which distinguishes stalking from other crimes.

The past few decades have witnessed a steady – and lately even exponential – increase in studies that focus on the problem of stalking. Thanks to these enquiries, earlier notions about stalkers and their victims have been profoundly revised. Despite the possible incompatibility of the various studies in relation to definitional issues, the general picture that has emerged is that stalking is not a rarity, but that it is prevalent in the wider community, that a typical stalking case involves a female victim who is harassed by her male ex-partner, and that the constant menace and unpredictable nature of the behaviour causes deleterious effects on the victims, irrespective of whether violence in fact occurs. More recent studies have even managed to construct stalking typologies and to identify potential risk factors that could greatly contribute to the risk assessment of and intervention in stalking sequences. Despite this recent growth in academic attention, there are still many blanks in our knowledge of the phenomenon. The studies so far have predominantly been carried out in Anglo-Saxon countries and there are, for example, only very few epidemiological, victimological, criminological, or legal studies that were executed in the Netherlands. In the next chapters some of these issues will be explored.

PART II

Nature and prevalence of stalking in the Netherlands

CHAPTER 2

PREVALENCE OF STALKING IN THE NETHERLANDS: THE TILBURG CARNIVAL STUDY

2.1. Introduction[168]

Prior to the criminalisation of stalking, there was much debate. Several scholars and politicians had doubts regarding the willingness of victims to report the behaviour to the police; they objected to the broadness of the article; they anticipated difficulties in proving the crime; and they feared a lack of enforcement on the part of the criminal justice system.[169] What nobody seemed to question was the assumption that stalking was a widespread social problem. With a simple referral to foreign prevalence research, it was accepted that stalking was an equally extensive phenomenon in the Netherlands, even though there had not been any empirical research to substantiate that hypothesis. Even to date, there are still no figures detailing the magnitude of the problem in the Netherlands.

However, in order to design and implement a good anti-stalking policy, insight into the extent of the phenomenon is crucial.[170] A reliable estimation of last year prevalence of stalking together with the number of stalking cases reported to the police is, for example, an important indicator of the reliance of victims on the criminal justice system. High prevalence rates can be used as empirical support to increase political attention and redirect financial resources to improve anti-stalking measures. They serve a purpose in raising consciousness about the issue. Furthermore, prevalence studies can be of importance for gauging the dimensions of the phenomenon, correcting certain prejudices, enhancing the cross-cultural validity of the construct of stalking, and defining the construct of stalking with greater precision.[171] All in all, there are ample reasons to deal with this gap in the current body of knowledge.

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168 This Chapter is largely based on S. van der Aa & M. Kunst, 'The prevalence of stalking in the Netherlands', *International Review of Victimology* (16) 2009, pp. 35-50.

169 M. Malsch, J.W. De Keijser & A. Rodjan, 'Het succes van de Nederlandse belagingswet: Groei aantal zaken en opgelegde sancties', *Delikt & Delinkwent* (38) 2006-8, pp. 855–869.

170 R. Verkaik & A. Pemberton, *Belaging in Nederland. Aard, omvang, achtergronden en mogelijkheden voor een aanpak. Eindrapport*, Leiden: Research voor Beleid 2001, Introduction; T. Budd & J. Mattinson, *The extent and nature of stalking: Findings from the 1998 British Crime Survey*, London: Home Office 2000, p. 5.

171 L. De Fazio & G.M. Galeazzi, 'Stalking: Phenomenon and research', in: *Modena Group on Stalking. Female victims of stalking. Recognition and Intervention models: A European study*, Milano: FrancoAngeli 2005, pp. 15-36 on p. 23.

2.2. Previous prevalence studies

The lack of reliable figures had not gone unnoticed in the past and several attempts were made to estimate the prevalence of stalking within the Dutch population. In his 2005 Master's thesis, De Jong estimated that there were between 2,600 and 50,000 stalking victims a year.[172] This was based on data on the willingness of victims to contact the police and the total number of registered contacts with the police by victims of stalking.

By projecting the ratio between stalking and assault in American research onto the Dutch situation, Verkaik & Pemberton calculated that there were approximately 40,000 stalking victims a year.[173] Using a different calculation based on the results of foreign studies, the lower limit was set at 20,000 and the upper limit even reached up to nearly 200,000 victims. Given the considerable assumptions in the projections and the very wide margin that resulted from the comparison, these numbers were found in need of more precision and reliability.

To provide a more accurate estimate, a set of questions related to stalking was included in the 2001 national Police Monitor (*Politiemonitor Bevolking*) — a biennial large-scale telephone survey to measure the Dutch population's perceptions of neighbourhood problems, feelings of safety, victimisation, and the quality of basic police care. Despite the inclusion of the stalking questions, the final report did not display any results. The administrators of the Monitor were of the opinion that stalking victims who were being victimised at the time of the survey or who had become a victim during the previous year would not be likely to participate in the survey. To prevent underestimation, the results were to be reported every five years.[174] Unfortunately, with the merger of the Police Monitor into the Safety Monitor (*Veiligheidsmonitor Rijk*) the questions on stalking were not repeated and data that were gathered earlier remained shelved. Once again, researchers were forced to revert to foreign estimates.

In previous studies, two main methods of investigating the prevalence of stalking can broadly be distinguished, namely research using police or court reports[175] and the use of victimisation surveys. The problem with the convenient method of investigating police files is that not every victim reports his or her problem to the police.[176] Combined with the fact that one stalking case can produce several reports, there is a risk of both under- and overestimation when using police records in prevalence research. Unless there is a clear picture of the *dark number* — the number of cases not reported to the police — and a registration system that separates different cases, studies based on police or court reports seem less suitable for prevalence estimations.

A better way to measure prevalence is to use community-based victimisation surveys. These surveys reflect victimisation, whether people have reported the stalking to the police or not. In

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172 D.W. de Jong, *Kom bij me terug, anders maak ik je af! Een verkennend onderzoek naar de aard en omvang van stalking in Nederland en knelpunten in de aanpak van dit misdrijf* (Master's thesis), Amsterdam: Vrije Universiteit 2005.

173 Verkaik & Pemberton (2001).

174 This information is derived from Verkaik & Pemberton (2001), p. 3, note 1.

175 For example, K. Hackett, 'Criminal harassment', *Juristat* (20) 2000-11, pp. 1-16; R. Kong, 'Criminal harassment', *Juristat* (16) 1996-12, pp. 1-13.

176 M. Kohn, H. Flood, J. Chase & P.M. McMahon, 'Prevalence and health consequences of stalking – Louisiana, 1998-1999', *Morbidity and Mortality Weekly Report* (49) 2000-29, pp. 653-655.

the end, only large-scale quantitative surveys based on representative samples can assess the extent and nature of stalking at a national level.[177] Given that these surveys are relatively costly, it is hardly surprising that only thirteen of such studies could be retrieved (Table 1).[178]

Table 1. Large-scale (>500 subjects) studies on stalking prevalence in the general population.

Authors (Year)	Sample country	Size	Lifetime prevalence %	Lifetime female/male %		Last year prevalence %	Last year female/male%	
				F	M		F	M
AuCoin (2005)	Canada	24,000	9	11	7	3	4	2
Basile et al. (2006)	United States	9,684	4.5	7	2	-	-	-
Budd & Mattinson (2000) *	England & Wales	9,988	11.8	6.1	6.8	2.9	4.0	1.7
Coleman (2007)	England & Wales	26,214	-	23	13	-	9	7
Dovelius et al. (2006) **	Sweden	4,019	9	-	-	2.9	-	-
Dressing et al. (2005)	Germany	679	11.6	17	4	1.6	-	-
Finney (2006)	England & Wales	24,498	-	23.3	15.2	-	8.9	8.9
Kohn et al. (2000) ***	United States	1,171	-	15		-	-	-
McLennan (1996)	Australia	6,300	-	15		-	2.4	-
Morris et al. (2002) ****	Scotland	1,024	-	17	7	-	5	2
Purcell et al. (2002) *****	Australia	1,844	23.4	32.4	12.8	5.8	7.3	4.1
Tjaden & Thoennes (1998b) *****	United States	16,000	-	8.1	2.2	-	1.0	0.4
Walby & Allen (2004)	England & Wales	22,463	-	18.9	11.6	-	7.8	5.8

* The overall prevalence during the last 12 months diminished to 2.6% when the unwanted attention had caused distress or upset and to 1.9% when the unwanted attention had caused fear of violence (3.7% and 2.7% for women and 1.3% and 0.9% for men, respectively).

** The overall lifetime prevalence diminished to 5.9% when the unwanted attention had caused the respondent to be quite or very frightened and to 3% when it had caused the respondent to be very frightened. The percentage of last 12 month-prevalence diminished to 2% (quite or very frightened) and 1% (very frightened).

*** 11% of the sample perceived the attention to be 'somewhat dangerous or life threatening'.

**** These were the percentages of people who considered themselves subjected to 'persistent and unwanted attention'. Lifetime prevalence diminished to 10% for women and 4% for men when they considered themselves subjected to 'stalking'. The 12-month prevalence diminished to 3% for women and 1% for men.

177 Budd & Mattinson (2000), p. 3.

178 This part of the research was finished in May 2008. Prevalence studies that were published after this date (e.g. K. Baum, S. Catalano, M. Rand & K. Rose, *Stalking victimization in the United States*, Washington D.C.: U.S. Department of Justice, Bureau of Justice Statistics 2009) are not included.

***** Purcell et al. included a time frame. When respondents were asked about 'two or more intrusions that persisted for more than two weeks', the percentages declined (total lifetime: 12.8%; male lifetime: 7.2%; female lifetime: 17.5%. Total 12 months: 3.2%; male 12 months: 2.2%; female 12 months: 4.1%). When asked about 'ten or more behaviours that persisted for more than four weeks', the percentages were: total lifetime: 10.6%; male lifetime: 6.1%; female lifetime: 14.9%. Total 12 months: 2.9%; male 12 months: 2.1%; female 12 months: 3.6%.

****** Depicted are the percentages of respondents who had 'felt fear'. This percentage increased when respondents had 'felt somewhat or a little frightened' (female lifetime: 12%; male lifetime: 4%; female 12 months: 6.0%; male 12 months: 1.5%).

The first victimisation survey that tried to chart the prevalence of stalking in the general population was performed by McLennan in Australia.[179] The experiences of women with various sexual and violent crimes were investigated. According to this study, 15% of 6,300 Australian women of 18 years and older had experienced a stalking episode at least once during their lifetime and 2.4% had experienced stalking in the 12 months previous to the study. This would amount to 200,000 stalking cases on an annual basis.

Tjaden & Thoennes analysed the results of the National Violence against Women Survey, a telephone survey administered to 8,000 men and 8,000 women.[180] Instead of using the word 'stalking', they applied a behavioural definition by listing several acts of which stalking can be comprised and deducing from the frequency of a certain behaviour and the fear aroused by the behaviour in the respondent whether a person had become a victim of stalking or not. Based on their results, 8% of women and 2% of men in the US had been stalked at some time in their lives, while 1% of women and 0.4% of men had been the victim of stalking during the previous year. If the fear requirement was reduced to the arousal of 'some fear', these numbers rose significantly.

The first community-based study on stalking in a continental European country was performed in Germany.[181] By asking inhabitants of Mannheim whether they had experienced 'multiple episodes of harassment that had to be present over a minimum of 2 weeks involving more than one form of intrusive behaviour and provoked fear', it was found that 17% of German women and 4% of German men had been stalked once in their lives.

Another non-Anglo Saxon study was carried out in Sweden.[182] Unlike the other countries, Sweden has no specific criminal anti-stalking legal provisions. Violations of restraining orders have been criminalised, but if they commit minor breaches the perpetrators are not adjudged to be criminally liable. Yet almost one in ten respondents answered that they had been the subject of repeated harassment at any time and 3% reported that this harassment had made them 'very frightened'.

As can be seen from Table 1, the studies show a variety of results. Lifetime prevalence estimates

179 W. McLennan, *Women's safety, Australia, 1996*, Canberra: Australian Bureau of Statistics 1996.

180 P. Tjaden & N. Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey*, Washington, D.C.: U.S. Department of Justice, National Institute of Justice 1998.

181 H. Dressing, C. Keuhner & P. Gass, 'Lifetime prevalence and impact of stalking in a European population. Epidemiological data from a middle-sized German city', *British Journal of Psychiatry* (187) 2005, pp. 168-172.

182 A.M. Dovelius, J. Öberg & S. Holmberg, *Stalking in Sweden. Prevalence and Prevention*, Stockholm: Swedish National Council for Crime Prevention 2006.

range from 4.5 to 23.4% and last year prevalence rates from 1.6 to almost 6%. It has affected between 7 and 32.4% of the adult female population and 2 to 15% of the male population once in their lives, with a last year involvement of 1 to 9% of women and 0.4 to 8.9% of men. The discrepancies between studies can mainly be attributed to different methodological choices. The studies vary in the representativeness of the samples, in the methods of investigation, and in the working definition of stalking used. As a result, prevalence rates vary significantly and possibilities of comparing or generalising findings across jurisdictions and studies are limited.[183] Even in the United Kingdom, where a stalking section was included in the British Crime Survey over several sweeps, the results are not easily comparable due to differences in category definitions and treatment of 'don't know' or 'don't wish to answer' responses.[184]

Despite these wide variations, several trends or characteristics have emerged. Even the studies that had the most restrictive criteria reported that a significant proportion of the population was affected by the conduct. Thanks to several epidemiological studies, the 'guesstimates' that dominated early discussions on the prevalence of stalking[185] are now relegated to the world of fantasy. The idea that stalking was predominantly performed by deranged fans of celebrities, for instance, had to be discarded. Another finding that is supported throughout the studies is that, in the general population, women are more likely than men to experience stalking.[186] Furthermore, young persons are more at risk of becoming the victim of stalking than older ones.[187]

Although there has been a certain growth in prevalence studies in recent years, academics continue to express a wish for further research in this area.[188] Table 1 shows that at present large-scale prevalence research of the general population is dominated by Anglo-Saxon research and that much of the research has only been reported in 'grey sources' such as national reports, rather than journals. Findings need to be substantiated by more research that is not just 'grey literature'. Also, in the light of the Anglo-Saxon dominance, the call for community-based studies is even more pressing when it comes to prevalence rates of stalking in continental European countries.[189]

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183 Dressing et al. (2005); De Fazio & Galeazzi (2005); and C.E. Jordan, P. Wilcox & A.J. Pritchard, 'Stalking acknowledgement and reporting among college women experiencing intrusive behaviors: Implications for the emergence of a 'classic stalking case'', *Journal of Criminal Justice* (35) 2007, pp. 556-569.

184 K. Coleman, K. Jansson, P. Kaiza & E. Reed, *Homicides, firearm offences and intimate violence 2005/2006. Supplementary Volume 1 to Crime in England and Wales 2005/2006*, London: Home Office Statistical Bulletin 2007.

185 P. Tjaden & N. Thoennes, *Full report of the prevalence, incidence, and consequences of violence against women: Findings from the National Violence Against Women Survey*, Washington D.C.: U.S. Department of Justice, National Institute of Justice 2000.

186 For example, Tjaden & Thoennes (1998).

187 For example, R. Purcell, M. Pathé & M.E. Mullen, 'The prevalence and nature of stalking in the Australian community', *Australian and New Zealand Journal of Psychiatry* (36) 2002-1, pp. 114-120; P. Tjaden, N. Thoennes & C.J. Allison, 'Comparing stalking victimisation from legal and victim perspectives', *Violence and Victims* (15) 2000-1, pp. 7-22; S. Morris, S. Anderson & L. Murray, *Stalking and harassment in Scotland*, Edinburgh: Scottish Executive Social Research 2002; McLennan (1996); Budd & Mattinson (2000); and K. AuCoin (ed.), *Family violence in Canada: A statistical profile 2005*, Ottawa: Statistics Canada 2005.

188 For example, L. Sheridan, G.M. Davies & J.C.W. Boon, 'Stalking: Perceptions and prevalence', *Journal of Interpersonal Violence* (16) 2001-2, pp. 151-167.

189 Dressing et al. (2005).

In this chapter, it will be attempted to generate an indication of the lifetime and annual prevalence of this form of victimisation within the Dutch population. While the prevalence of stalking was the focus of the study, possible relationships between background characteristics and stalking victimisation were also examined to see whether previously established trends would emerge from this sample as well. More specifically, as part of the study, it was measured whether there was a relationship between stalking and the subject's gender, relationship status, or age.

2.3. Method

2.3.1. Respondents

Questionnaires were distributed to 1,027 persons in July 2007 during the annual Tilburg Carnival. Being the largest carnival in the Benelux with approximately 1.2 million people visiting the site in a ten-day period, this event attracts people from all over the country. Eligibility was restricted to persons with Dutch citizenship of 15 years or over. Respondents were obtained by randomly asking people on the streets of Tilburg to spare five minutes to fill out a questionnaire on 'unpleasant events', which had to be completed and returned on the spot. The questionnaire was distributed in the context of another study on unpleasant events in general, so only two questions on the questionnaire were devoted to stalking.

During the introduction, respondents were told that they would be asked about unpleasant events and that participation in the survey was completely voluntary. Besides the possibility of asking questions of the researchers on the spot, there was also an e-mail address on the form if the respondents were in need of more information. Participation was voluntary and five rewards of €50 were put up for raffle among those respondents who not only completed this questionnaire, but also the follow-up surveys that were sent to them over the internet in the following six weeks. This study only concerned the baseline measurement of the first questionnaire.

Respondents were widely dispersed, with an age range from 15 to 80 years old and a mean of 35 years (SD = 13.94). The distribution was as follows: 59 (5.7%) were between 15 and 18 years old; 206 (20.1%) were between 19 and 24 years old; 299 (29.1%) were between 25 and 35 years old; 270 (26.3%) were between 36 and 55 years; 105 (10.2%) were more than 56 years old. Eighty-eight respondents preferred not to fill in their date of birth which might be due to privacy considerations. Furthermore, 524 (51.0%) of the sample indicated that they were in a relationship, whereas 470 (45.8%) reported being single.[190] The distribution of sex was as follows: 578 (56.3%) of the sample was male; 439 (42.7%) of the sample was female.

190 The married/cohabiting versus single variable was included, because previous studies had revealed that the civil status of respondents was related to the odds of stalking with singles, separated, or divorced people facing the highest risks and married or widowed people the lowest (Budd & Mattinson, 2000).

2.3.2. Materials

Whether respondents had ever been stalked during their lifetime was the second question on the questionnaire.[191] A working definition of stalking was used in this question which read: 'Have you ever been the target of persistent unwanted attention from another person?' Due to space and time restraints, a question that directly enquired after people's stalking experiences was included instead of using a behavioural list. By including the working definition, the respondents were given some guidance to ensure that they understood what stalking entailed. In accordance with Article 285b of the Dutch Criminal Code, the working definition was neutral on whether or not the respondent had experienced fear caused by the stalking.

To avoid an undervaluation of unwanted attention — people might think of harassment by call centre agents — the word stalking was placed at the end of the question between brackets to indicate the seriousness of the unwanted attention. Although the questionnaire was written in Dutch, the English word 'stalking' was used instead of the official Dutch equivalent *belaging*. Many Dutch citizens interpret the word *belaging* as a mild, non-punitive form of harassment, whereas the more commonly used 'stalking'[192] has a more serious connotation.

The third multiple choice question inquired whether respondents had experienced any serious or unpleasant events during the last 12 months, stalking being one of the multiple options from which they could chose.

2.3.3. Analysis

The data analyses were conducted using SPSS (version 12.0.1). Both dependent variables in this study, lifetime and last year stalking, were measured dichotomously (1 = yes, 0 = no). Lifetime prevalence refers to the percentage of persons within a demographic group who have been the subject of stalking at some time during their lives. Annual prevalence refers to the percentage of persons who were stalked in the 12 months preceding the study.[193] Where lifetime prevalence provides an appropriate means of identifying victims and non-victims, last year prevalence indicates the current extent of the problem.[194] The Pearson chi-square statistic was used to test for statistically significant differences in discrete variables such as victims who perceived themselves as being stalking victims and those who did not (p-value less than or equal to 0.05). Because estimates presented generally exclude missing data, sample and sub sample sizes ($n's$) sometimes vary. To take into account the possible interrelations between the various characteristics, logistic regression analyses were conducted to assess the associations between lifetime and last year stalking victimisation and age, gender, and relationship status independently of each other. Odds ratios and 95% confidence intervals, as well as the Wald F test, were used to assess the significance of the associations between lifetime and last year stalking victimisation and the three aforementioned demographic characteristics.

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191 For the entire Tilburg Carnival questionnaire, see Appendix 1.

192 Verkaik & Pemberton (2001).

193 See Tjaden & Thoennes (1998; 2000).

194 Budd & Mattinson (2000).

2.4. Results

As Table 2 indicates, of the total of 1,027 respondents who answered the second question, 16.5% reported a lifetime rate of stalking victimisation, and 3.9% of 1,020 respondents had experienced stalking within the past twelve months. More than one in five women and almost one in seven men reported having been stalked at some time in their lives. These ratios declined to almost one in twenty women and one in thirty-two men when only the last twelve months were taken into consideration. Based on the estimates of Statistics Netherlands *(Centraal Bureau voor de Statistiek)*, over 300,000 women and nearly 200,000 men are stalked annually in the Netherlands. Approximately 1.4 million women and 0.9 million men have been stalked at some time in their lives.[195]

TABLE 2. Frequencies and percentages for stalking-related variables

Lifetime prevalence rates (n = 1,017)	**Frequency**	**Percentage***
Overall (n = 1,017)	168	16.5
Female (n = 435)	90	20.7
Male (n = 573)	77	13.4
Last year prevalence rates (n = 1,020)		
Overall (n = 1,020)	40	3.9
Female (n = 435)	21	4.8
Male (n = 575)	18	3.1

*valid percentages

Bivariate cross-tabular analysis of the associations between background characteristics and life-time stalking showed that the relationship between gender, age, and relationship status and self-acknowledged stalking victimisation was significant (see Table 3). Women were more likely than men to have experienced stalking at some time in their lives. Furthermore, those who defined themselves as stalking victims were usually young and single as opposed to those who did not. In addition, the association between age and relationship status proved significant in the analysis of last year stalking as well. Again, single(s) and young people more frequently reported having been stalked in the last twelve months than people involved in a relationship or older persons. In contrast, there appeared to be few differences in last year stalking victimisation and gender.

TABLE 3. Demographic variables cross-tabulated with lifetime and last year stalking prevalence

	Lifetime prevalence	**Last year prevalence**

195 According to the latest census that was carried out in 2001 (*De Nederlandse Volkstelling 2001*, Centraal Bureau voor de Statistiek), there were 6,386,241 men and 6,622,014 women of 15 years and over. This would mean that 317,857 women and 197,973 men are stalked annually in the Netherlands, whilst 1,370,757 women and 855,756 men are stalked at least once in their lifetime.

		yes		no	yes		no
Gender							
Female	90	(8.9%)	345	(34.2%)	21 (2.1%)	414	(41.0%)
Male	77	(7.6%)	496	(49.2%)	18 (1.8%)	557	(55.1%)
Chi-square (p-value)*		9.407 (0.002)			1.921 (0.166)		
Civil status							
Married/cohabiting	73	(7.4%)	447	(45.3%)	14 (1.4%)	504	(5 1.3%)
Single	91	(9.2%)	376	(38.1%)	25 (2.5%)	442	(44.7%)
Chi-square (p-value)		5.270 (0.022)			4.617 (0.032)		
Age							
15–18	14	(1.5%)	45	(4.8%)	4 (0.4%)	55	(5.9%)
19–24	53	(5.7%)	153	(16.4%)	16 (1.7%)	190	(20.3%)
25–35	50	(5.4%)	246	(26.4%)	9 (1.0%)	288	(30.8%)
36–55	39	(4.2%)	229	(24.6%)	6 (0.6%)	261	(27.9%)
56+	5	(0.5%)	98	(10.5%)	2 (0.2%)	103	(11.0%)
Chi-square (p-value)		24.560 (<0.001)			12.980 (0.011)**		

* Significant variables using Chi-square were also significant with a continuity correction.

** 2 cells (20.0%) have expected count less than 5.

Table 4 represents the findings from a multivariate logistic regression that incorporated the three background variables simultaneously (Chi-square = 36.53; df = 3; $p < 0.001$). Among those who said they had suffered from stalking once, life-time prevalence was significantly related to both gender and age. Women had significantly greater odds (approximately 1.8 times) of classifying themselves as stalking victims than men. When age decreased by one year, respondents had 0.036 greater odds of reporting life-time stalking victimisation. Interestingly, in contrast to the chi-square analysis, relationship status was not significantly related to stalking when other factors were taken into account. Furthermore, none of the background variables had a significant impact on last year stalking.

TABLE 4. Logistic regression models estimating odds of life-time† and last year prevalence‡

Variables	Life-time prevalence		Last year prevalence	
	b (S.E.)	Odds ratio	b (S.E.)	Odds ratio
Gender	0.578* (0.180)	1,783	0.494 (0.407)	1.638
Civil status	0.050 (0.202)	1.051	0.455 (0.349)	1.576
Age	–0.036* (0.008)	0.965	–0.030 (0.017)	0.970

† n = 904 after list wise deletion (based on 1,027 eligible subjects)

‡ n = 905 after list wise deletion (based on 1,027 eligible subjects)

* $p < 0.001$.

2.5. Study limitations

This study was limited in a number of important ways. Although the Tilburg Carnival attracts a lot of people from other parts of the country, it is not unlikely that the design of the study caused the local population of Tilburg to be overrepresented and the set-up generally excluded people who do not visit carnivals. Whether these factors influence the generalizability of the findings could not be controlled for.

The second limitation lay in the measure of stalking, which consisted of only two survey items asking subjects directly whether they had ever been the target of persistent unwanted attention from another person. Previous studies have shown that prevalence rates increase significantly when people are allowed to self-define their victimisation instead of using behavioural lists as a screening device. Tjaden et al., however, demonstrated that the major cause of the divergence in prevalence rates lies probably in the requirement of the victim to have experienced fear as a consequence of the stalking.[196] Sixty percent of the men and women in their sample who defined themselves as stalking victims, but failed to meet the legal criteria of being a stalking victim, did not fit the legal definition because they did not meet the fear requirement. People who have been the subject of unwanted repeated attention can regard themselves as victims of stalking even though this attention was not necessarily fear-provoking. Nevertheless, if a study includes fear as a constitutive element of stalking, they will not be classified as such. In accordance with Dutch criminal law, the present study did not include fear in its definition, thereby reducing the risk that a behavioural measure would have resulted in a considerably lower outcome. In contrast, there is even a risk of underestimation, given that many respondents appear to intuitively link stalking to fear,[197] thereby wrongfully disregarding themselves as stalking victims, especially since respondents seem to have a tendency to report only serious experiences instead of trivial incidents — even in studies that use a broad definition.[198]

196 Tjaden et al. (2000).

197 Jordan et al. (2007).

198 Dovelius et al. (2006).

Some authors have expressed a preference to avoid questions that ask directly about experience of 'stalking', because it might render victims unable to recognise the applicability of the term to them.[199] In this study, the word stalking was explicitly included, albeit between brackets. First of all, stalking is very broadly defined in the Dutch Criminal Code, which reduces the risk that people consider their own experiences irrelevant in comparison to the legal definition. Furthermore, stalking has become part of the public lexicon due to the extensive media coverage it has received in the past few years,[200] thereby increasing the chance that people have a more congruent understanding of what the term entails. Sheridan et al. found that — despite the lack of a formal legal definition of criminal harassment – there is a shared understanding among members of the British public on what were constituent behaviours of criminal harassment.[201] These similar ideas of what constitutes stalking even seemed to transcend different cultural backgrounds.[202] Despite these considerations, there is a risk that respondents may have interpreted the term differently.

Another limitation was that, compared to other epidemiological studies on stalking, the present study had a relatively small sample size. In addition, the willingness of people to participate in a survey on serious or unpleasant events is likely to depend on whether or not people have experienced such events. Systematic errors arise when victims are more eager to participate or, on the contrary, are more reluctant to disclose their experiences because it is considered intrusive or unpleasant. Especially with vice crimes or crimes of interpersonal violence, respondents may be hesitant to report their victimisation.[203] Another aspect that may have biased the data is the fact that there was an overrepresentation of singles in the current sample.[204] Given that stalking is most prevalent among single, divorced, and separated respondents[205] this may have had an impact on the generalisability of the findings. Finally, the prevalence estimates may be biased by loss of recall. Due to the lifetime reference period ('have you *ever* been the target of unwanted attention') recall problems are more likely to have had an influence. People are less likely to remember events further back in time. This problem is inherent in all retrospective studies and it has also been established for victimisation surveys.[206]

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199 For example, Morris et al. (2002); Sheridan et al. (2001); and Budd & Mattinson (2000).

200 B.S. Fisher, F.T. Cullen & M.G. Turner, 'Being pursued: Stalking victimisation in a national study of college women', *Criminology & Public Policy* (1) 2002-2, pp. 257-308.

201 Sheridan et al. (2001).

202 J.D.H. Jagessar & L.P. Sheridan, 'Stalking perceptions and experiences across two cultures', *Criminal Justice and Behavior* (31) 2004-1, pp. 97-119.

203 E.A. Fattah, *Understanding criminal victimization*, Scarborough: Prentice Hall 1992, p. 39.

204 According to the Social Monitor (Sociale Monitor) of Statistics Netherlands (Centraal Bureau voor de Statistiek), 15.4% of the population between 30 and 64 years old was single (Sociale Monitor van 18 January 2010 on <www.statline.cbs.nl>). Because the age category of the Social Monitor (30-64 years) does not exactly match the age category of the current sample (15-80 years), it might be that the proportion of singles does correspond to the general population, but this seems very unlikely.

205 Budd & Mattinson (2000).

206 For example, A. Schneider, 'Methodological problems in victim surveys and their implications for research in victimology', *Journal of Criminal Law and Criminology* (72) 1981-2, pp. 818-838.

2.6. Conclusion

Dressing et al.'s conclusion that stalking appears to be a widespread phenomenon in continental Europe gains credence given the outcome of the present study.[207] Despite the fact that stalking was measured with only two items that relied heavily on the respondents' memory, a remarkable one in every six respondents considered themselves to have been subjected to stalking at some time during their lives and almost 4% had been stalked during the 12 months previous to the study. The study's life-time rate of stalking victimisation among the general public showed strong similarities with the ones reported by Coleman et al., Finney, and Walby & Allen.[208] Last year prevalence rates, on the other hand, were more consistent with the figures reported by AuCoin, Budd & Mattinson, and Morris et al.[209]

Next to the extent of the problem, this study furthermore confirmed the general findings of a growing body of literature that stalking behaviour shows large disparities in victimisation rates between men and women. Women were almost twice as likely as men to report having been stalked at some time in their lives. One explanation may be that there is an actual difference, another explanation may be that these differences can be attributed to different ideas males and females possess about defining themselves as stalking victims.[210] A remarkable finding in that respect is that studies of stalking in college populations have not found a significant association between gender and self-attributed stalking victimisation.[211]

Another difference was that lifetime experiences of stalking are higher among younger age groups. It is important to find out whether older men and women have actually suffered less from stalking or whether the significant differences can be attributed to memory recall or unfamiliarity with the term. Besides the finding that stalking may more frequently involve younger persons, it could also reflect an actual increase in the phenomenon. It might be argued that, as a result of recent technological changes — like the wide penetration of the internet and telephone access — and social changes — like the growing acceptance of having multiple love relationships — there are increased opportunities and reasons to harass another person. Longitudinal prospective research is needed to verify these and other theories.

A gap in the current body of knowledge is, furthermore, whether 'fear' is actually perceived by individuals as an essential factor in stalking. Jordan et al. demonstrated that anxiety about violence does seem to play a role in respondents' minds in acknowledging stalking victimisation, but their sample was drawn from a jurisdiction that had incorporated the fear requirement in its legal definition.[212] The question is whether inhabitants of countries where the

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207 H. Dressing, P. Gass & C. Keuhner, 'What can we learn from the first community-based epidemiological study on stalking in Germany?', *International Journal of Law and Psychiatry* (30) 2007, pp. 10-17.

208 Coleman et al. (2007); A. Finney, *Domestic violence, sexual assault and stalking: Findings from the 2004/2005 British Crime Survey*, London: Home Office Online Report 2006; S. Walby & J. Allen, *Domestic violence, sexual assault and stalking: Findings from the British Crime Survey*, London: Home Office 2004.

209 AuCoin (2005); Budd & Mattinson (2000); Morris et al. (2002).

210 Tjaden et al. (2000).

211 B.S. Fisher, F.T. Cullen & M.G. Turner, *The sexual victimisation of college women*, Washington D.C.: U.S. Department of Justice, National Institute of Justice 2000; B.H. Spitzberg & W.R. Cupach, 'The state of the art of stalking: Taking stock of the emerging literature', *Aggression and Violent Behavior* (12) 2007-1, pp. 64-86.

212 Jordan et al. (2007).

law is indifferent to the mental consequences of the harassment also intuitively view provoking fear in victims as characteristic of stalking. Where European legislation often only focuses on the issue of intrusion into a person's private life, irrespective of whether fear is involved,[213] prejudiced attitudes towards stalking may, for example, cloud the judgment of the police as to the appropriateness of an intervention.

213 De Fazio & Galeazzi (2005).

CHAPTER 3

NATURE AND PREVALENCE OF STALKING IN THE NETHERLANDS: THE POLICE MONITOR

3.1 Introduction[214]

In the previous chapter, the results of a study that was carried out at the Tilburg Carnival were presented. Although this study was based on empiricism and possibly gave a more accurate estimation of the prevalence of stalking in the Netherlands than some of the other attempts in that respect, it suffered from many substantial limitations. First of all, in comparison to other studies, the study was based on a relatively small sample size, which furthermore consisted of a convenience sample. Furthermore, due to lack of space in the questionnaire, which focused on serious events in general, only two unsophisticated stalking-related questions could be included. Respondents were bluntly asked whether they had ever been 'the target of unwanted repetitive attention of somebody else (stalking)'. In social science, researchers are more accustomed to using so-called behavioural lists. Previous research has shown that prevalence numbers can rise significantly when respondents are allowed to self-define their stalking victimisation instead of completing a form by which this status can be established more objectively.[215] The same lack of space explains why the relation between stalking and only three variables (gender, age and relationship status) could be measured. Finally, the fact that respondents were selected at a carnival may very well have a bearing on the generalisability of the results. All in all, these limitations were serious enough to try to validate the findings of the Carnival study with the help of other research.

Ideally, prevalence is measured through large-scale victimisation surveys based on a representative sample.[216] These studies represent victimisation, irrespective of whether people have filed for a report or not. Given that this type of large-scale research can be very expensive, it is not surprising that many researchers shy away from such an enterprise. Fortunately, in this case, a large financial investment proved unnecessary, for – just like in the UK and the US – it turned out that Dutch data have been available for years now. Already back in 2001, the national Police Monitor *(Politiemonitor Bevolking)* had included a set of questions related to stalking. With over 88,000 respondents, this would be the largest quantitative study to include stalking

214 This chapter is to a large extent based on S. van der Aa & A. Pemberton, 'De aard en omvang van belaging in Nederland', *Tijdschrift voor Veiligheid* (8) 2009-4, pp. 22-35.

215 For example, P. Tjaden, N. Thoennes & C.J. Allison, 'Comparing stalking victimisation from legal and victim perspectives', *Violence and Victims* (15) 2000-1, pp. 7-22.

216 T. Budd & J. Mattinson, *The extent and nature of stalking: Findings from the 1998 British Crime Survey*, London: Home Office 2000, p. 3.

questions ever.[217] As indicated in the previous Chapter, the final report made no mention of the results, because the administrators feared an underestimation. Stalking victims who were being victimised at the time of the survey or who had become a victim during the previous year would not be likely to participate in the survey. To prevent underestimation, the results were to be reported every five years. In the end, the questions on stalking were not repeated and the results were never analysed.

In this Chapter, the data from the Police Monitor 2001 will be analysed to obtain an indication of the prevalence of stalking in the Netherlands. Simultaneously, the validity of the results of the Tilburg Carnival can be tested. Although the emphasis of this Chapter will be on prevalence numbers, the connection between stalking and other variables will also be looked into to see whether previously established trends, such as the connection between gender and stalking[218] or age and stalking,[219] is reflected by the current sample as well.

3.2. Method

3.2.1. Respondents[220]

The sample was drawn from the Dutch telephone directory. Prior to the telephone contact, all selected households were sent a letter announcing the survey. Per household, no more than three attempts to establish telephone contact were carried out on consecutive working days (including Saturday morning) at various points in time (in the evening, in the morning, in the afternoon). Each time, the person of over 15 years old, who was to celebrate his or her birthday first, was asked to participate. If this person was absent, attempts were made to make an appointment with him or her. The sample was divided into geographic areas, such as the region, districts, basic teams, municipalities, and neighbourhoods. The number of interviews that needed to be held per geographic area was established beforehand. An established quota was, for instance, that in each of the 25 police regions, a minimum of 1,000 respondents needed to be interviewed. Of the 178,951 people in the gross sample, in 69% (n=123,008) of the cases, the right person was approached. After subtracting the number of people who declined to cooperate and those who had other reasons for non-response, this resulted in a net sample

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217 The British Crime Victimisation Survey 'only' had 26,214 respondents (K. Coleman, K. Jansson, P. Kaiza & E. Reed, *Homicides, firearm offences and intimate violence 2005/2006. Supplementary volume 1 to Crime in England and Wales 2005/2006*, London: Home Office Statistical Bulletin 2007).

218 For example, P. Tjaden & N. Thoennes, *Stalking in America: Findings from the National Violence against Women Survey*, Washington D.C.: U.S. Department of Justice, National Institute of Justice 1998.

219 See, for example, R. Purcell, M. Pathé & P.E. Mullen, 'The prevalence and nature of stalking in the Australian community', *Australian and New Zealand Journal of Psychiatry* (36) 2002-1, pp. 114-120; Tjaden, Thoennes & Allison (2000); S. Morris, S. Anderson & L. Murray, *Stalking and harassment in Scotland*, Edinburgh: Scottish Executive Social Research 2002; W. McLennan, *Women's safety. Australia. 1996*, Cranberra: Australian Bureau of Statistics 1996; Budd & Mattinson (2000); and K. Aucoin (ed.), *Family violence in Canada. A statistical profile 2005*, Ottawa: Statistics Canada 2005.

220 These and the following Section (Section 4.2.2.) are based on the research account as described in Uitvoeringsconsortium Projectbureau Politiemonitor, *Politiemonitor 2001. Landelijke rapportage*, Den Haag/ Hilversum: Ministerie van Binnenlandse zaken en Koninkrijksrelaties/Ministerie van Justitie 2001, pp. 103-117.

of 88,607 respondents (72% of the people who were approached; 50% of the gross sample). The interviews were held in the period between January 2, 2001, and the third week of March of that same year. Participation was entirely voluntary.

The ages of the respondents varied from 15 to 98 years with a mean of 49 years (SD=17.374). The division in gender was as follows: 41,525 (46.9%) of the sample was male; 47,082 (53.1%) of the sample was female. As to education, 9.4% (n=8258) had received only primary education, 15.6% (n=13,735) a lower vocational technical education, 14.8% (n=13,057) a lower general secondary education, 23.0% (n=20,258) a senior secondary vocational education, 7.5% (n=6,647) a higher general secondary education and pre-university education, 20.8% (n=18,341) a higher professional education, and 8.9% (7875) had finished university.[221] In comparison to the entire Dutch population, the sample deviated somewhat on the gender and age variables,[222] but this problem was solved by weighting these variables during the analysis.

3.2.2. Materials

For the telephone interviews, CATI (Computer Assisted Telephone Interviewing) was used, a software programme that makes it possible for the interviewer to enter the answers directly into a computer system. Another advantage of CATI was that the questions and the routings were laid down in advance, which promoted the uniformity of the interviews. All interviews were carried out by trained and experienced interviewers, who received instructions beforehand on the goal and the content of this specific study. The module on stalking itself was based on the questionnaire that Tjaden & Thoennes had developed.[223] The screening question ('in your lifetime, has anyone ever REPEATEDLY harassed you?') was clarified by using behavioural lists. Instead of directly having to indicate whether they considered themselves stalking victims, respondents were asked whether their harasser had followed or lain in wait for them, whether the harasser had made unwanted phone calls, whether the harasser had sent them unsolicited letters or other objects, whether the harasser had (threatened to) destroy(ed) property that belonged to the respondent and whether the harasser had threatened to hurt loved ones or pets. With respect to the most recent stalking incident – for it was possible that one respondent had encountered multiple stalkers in his or her life – respondents were asked to indicate how old they were when the harassment started, whether the respondent had felt threatened because of the behaviour, whether the harasser was a man or a woman and what the relationship of the respondent to the harasser was at the time when the harassment began.[224]

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221 The Dutch equivalents are: primary education *(lager onderwijs)*, lower vocational technical education *(lager beroepsonderwijs; 12-16 yrs)*, lower general secondary education *(MAVO)*, senior secondary vocational education *(middelbaar beroepsonderwijs; 16-18 yrs)*, higher general secondary education and pre-university education *(HAVO/VWO)*, and higher professional education *(hoger beroepsonderwijs; 18-22 yrs)*.

222 See *Politiemonitor 2001*, p. 108, Table 4.

223 Tjaden & Thoennes (1998).

224 An English translation of the questionnaire can be found in Appendix 2.

3.3. Analysis

The data were analysed using SPSS (version 16.0). In prevalence research, it is customary to not only report the percentage of persons within a demographic group who have been the subject of stalking at some time during their lives (lifetime prevalence), but also to report the percentage of persons who were stalked in the twelve months preceding the study (annual prevalence). As mentioned in Chapter 2, lifetime prevalence helps to distinguish the victims from the non-victims, whereas the annual prevalence indicates the current extent of the problem.[225] However, given the phrasing of the questions, it was impossible to estimate the extent of the harassment during the twelve months preceding the survey with the current set of data, yet is *was* possible to indicate the number of *new* cases in which the stalking had started in the previous two years. In the 'results' section, the term 'new victimisation' refers to stalking which began during the 24 months preceding the survey. The respondents whose first stalking incident took place *before* this time were not taken into account. It is possible that these 'new victims' had been victimised previously in their lives, but only their most recent experiences were inquired into.

Pearson chi-square analyses were used to check for statistically relevant differences between dichotomous or discrete variables such as victimisation and non-victimisation (p-value .05). Because some data were missing, sample and subsample sizes (n's) sometimes vary. To calculate possible relationships between various variables, a logistic regression analysis was conducted. Odds ratios, 95% confidence intervals, and the Wald F test were used to determine the significance of the associations between the variables. As mentioned before, the sample did not match the Dutch population on certain characteristics. To enable a generalisation of the results to the entire population, the sample was corrected with the help of weighting factors on the variables gender, age, and geographical area.[226]

3.4. Results

As illustrated in Table 1, 24% of the Dutch population has suffered from behaviour that could possibly fall under the statutory definition of stalking. More than one in four women and almost one in five men have ever experienced repeated unwanted behaviour. These percentages declined to between 1.4 and 3.5% of women and between 0.9 and 2.5% of men if only new victimisation in the preceding two years was taken into consideration. When these percentages are projected on the estimates of Statistics Netherlands *(Dutch Central Bureau of Statistics)*, this would imply that, every two years, for between ± 93,000 and almost 250,000 female and for between ± 57,000 and almost 160,000 male victims, a harassment sequence begins. Approximately 1.9 million women and 1.2 million men have been stalked at some point in their lives.[227]

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225 Bud & Mattinson (2000).

226 A more detailed description of this process can be found in the final report *Politiemonitor 2001*, pp. 108-109.

227 According to the most recent census held in 2001 (*De Nederlandse Volkstelling 2001*, Centraal Bureau voor de Statistiek), there were 6,386,241 men and 6,622,014 women of 15 years and older in the Netherlands. This would mean that every two years, between 57,476 and 159,656 men and between 92,708 and 231,770 women are newly victimised. 1,226,158 men and 1,893,896 women have been victimised at least once in their lifetime.

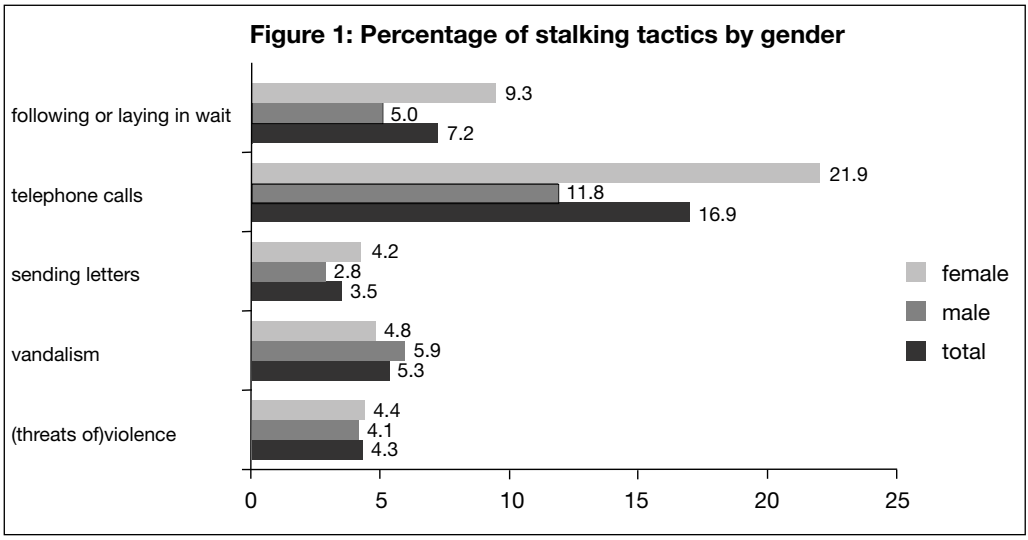
TABLE 1. Frequencies and percentages for victimisation of stalking

Lifetime prevalence rates	Frequency	Percentage
Overall (n = 88,607)	21,246	24.0
Female (n = 45,106)	12,901	28.6
Male (n = 43,501)	8,346	19.2
'New victimisation' during the previous 2 years		
Overall (n = 88,607; valid n = 21,020) 1,048-2,694	1.2-3.1	
Female (n = 45,106; valid n = 12,782) 643-1,602	1.4-3.5	
Male (n = 43,501; valid n = 8,238) 405-1,092	0.9-2.5	

*Given that the date of birth of the respondent was not subject to inquiry (only the current age and the age by the time the harassment began), it is impossible to give an accurate estimation of 'new victimisation'. It is only possible to calculate the margins that contain the exact number. The margins are calculated by first reporting the number of respondents who had reported the same age twice (lower limit) and then add up this group to that of the respondents who reported a one-year difference between their current age and the age at which the harassment started (upper limit).

With regard to the 'new victims', it must be remarked that the estimation of 1.4% of women and 0.9% of men is probably very conservative. Given that the date of birth of the respondent was not asked in the Police Monitor (only the current age and the age at which the harassment started), it is impossible to give an accurate estimation of new victimisation. The lower limit is then calculated by reporting the respondents who mentioned the same values for both 'current age' and 'age at which the harassment started'.

In Figure 1, the different stalking tactics are set out. Making unwanted telephone calls turned out to be the most popular way of harassment, followed by following a person or lying wait. Further analysis showed that in 65.6% (n=13,947) of the cases, the harasser used only one means of harassment and that making telephone calls was the tactic that occurred most in isolation (n=9,164; 65.7%). 20.6% of the victims was targeted by two methods and 13.8% suffered from three or more forms of harassment.



On the question of whether they felt threatened as a consequence of the repetitive behaviour, 59.1% (n=12,447) of the victims said that this was indeed the case. Even of the victims who were only harassed by telephone, a large proportion (41.4%) felt threatened. In accordance with foreign research, the perpetrator was predominantly of the male gender: 88.1% (n=15,053) of the victims was harassed by a man and 11.9% (n=2,041) by a woman. A remarkable finding was that the identity of more than 56% of the harassers was unknown (Table 2). It turned out that the experiences of this group of victims structurally differed from those of other victims. Victims who were harassed by an unknown person were significantly more likely to be affected by only one stalking method (77.3% versus 52.3%; $X^2 = 1696$; df = 4; $p < .001$) and they were more often subjected to unwanted telephone calls (75.9% versus 64.5%; $X^2 = 331$; df=1; $p < .001$) than victims whose stalkers had been identified.

Table 2. Relationship between victim and offender prior to the harassment

Relationship (n=19,928)		Frequency	Percentage[1]
Partner		233	1.2%
Ex-partner		1,500	7.5%
Unknown		11,340	56.9%
(Other) acquiantance[2]	Neighbour/local resident	1,954	9.8%
	Family	610	3.1%
	Acquaintance from school	852	4.3%
	Other	3,440	17.3%

[1]The total percentage exceeds 100% because of rounding.

[2]This was a question with an open ending ('an (other) acquaintance, namely....'). Only the answers with the highest scores are presented here. In answer to this question, 37 respondents indicated that they had never been repeatedly harassed by anyone.

A bivariate cross-tabular analysis of the associations between background characteristics and stalking showed that the relationship between stalking and gender, employment status, and Dutch origins was significant (Table 3). Women ran a greater risk than men to have experienced stalking at some time in their lives. Furthermore, stalking victims were more likely to be employed and they were more likely not to originally Dutch.

Table 3. The association between various social-demographic variables and stalking

	Victim of stalking	
	Yes	No
Gender		
Female	12,901(28.6%)	32,205(71.4%)
Male	8,346(19.2%)	35,155(80.8%)
Chi-square (p-value)[1]		1,077 (.000)
Employed		
Yes	13,960(25.5%)	40,806(74.5%)
No	7,277 (21.6%)	26,462(78.4%)
Chi-square (p-value)[1]		176 (.000)
Dutch origin		
Yes	20,325(23.8%)	64,910(76.2%)
No	919 (27.6%)	2,410 (72.4%)
Chi-square (p-value)[1]		24.843 (.000)

[1] Variables that were significant under X^2 were also significant under continuity correction.

There was also a correlation between age and education and stalking. The older the respondent, the smaller the chance of stalking victimisation ($r = -.089$) and the higher the education, the greater the chance of stalking victimisation ($r = .056$). Both correlations were significant ($p < .001$) but the strength of the connection was relatively weak. Age only explained 0.8% of the variance in stalking victimisation and education only 0.3%.

To estimate the relative importance of each predictor variable independent of each other, a multivariate logistic regression was carried out that incorporated stalking as the dependent variable and five socio-demographic variables as predictors: gender, employment status, Dutch origin, age, and level of education ($X^2 = 2500$; $df = 5$; $p < .001$). After removing 485 (0.5%) cases with missing data, there were still 88,122 respondents left for the analysis, 20,777 of which were stalking victims and 67,345 were respondents who had never been repeatedly harassed in their lives. After having tested whether the sample lived up to the assumptions for logistic regression (large enough sample size, no multicollinearity among predictor variables, no outliers), use was made of the Forced Entry Method – the default procedure in SPSS – in which all predictor variables are tested in one block. Although the model was statistically relevant, it only explained a very small part of the variance (Cox en Snell $R^2 = .028$ and Nagelkerke $R^2 = .042$).[228] Table 4

228 However, the Hosmer and Lemeshow Test was significant. This implies that there is not a proper 'goodness of fit'.

depicts the results of the logistic regression per variable. It shows that stalking was significantly related to all the variables that were included in the model. Women had significantly greater odds of being victimised than men (approximately 1.9 times as great). When age increased with one year, the odds of victimisation declined with .01. Furthermore, employment status, Dutch origin, and level of education were of importance. People with a job had 1.058 greater odds, people who were not originally Dutch had 1.14 greater odds and people with a higher education had 1.09 greater odds of ever having been victimised.

Table 4. Logistic regression model with the odds of stalking (n=88,122)

			95% CI	
	B (S.E.)	Odds ratio	Lowest	Highest
Gender	.624*(.017)	1.866	1.805	1.929
Age	-.011*(.001)	.990	.988	.991
Employment status	.057**(.021)	1.058	1.016	1.102
Dutch origin	.135*(.042)	1.144	1.053	1.243
Level of education	.082*(.005)	1.085	1.075	1.096

* $p < .001$ (on the Wald test)

** $p < .01$ (on the Wald test)

3.5. Limitations

This study has several limitations. People who did not possess a telephone or whose telephone number was not registered in the telephone directory were automatically excluded from participation in the study. It is possible that victims of stalking ran a higher risk of being excluded, for it is plausible that stalking victims are extra anxious about releasing personal information and many of them may have secret telephone numbers to protect their privacy. This goes all the more for those who were still being harassed at the time of the survey. The fact that a number of people from the gross sample could not be contacted may be due to the same issue. Stalking victims possibly screen all their incoming telephone calls and they may be more inclined to leave the receiver on the hook when they see an unfamiliar number. Whether, as a consequence, the prevalence of stalking was underestimated could not be controlled for.

Furthermore, systematic errors can occur if the willingness of people to participate in a certain study into crimes and safety depends on their victimisation. Victims may be more willing to participate in surveys, for example because they like to tell about their experiences, or they may, on the other hand, be more reluctant, because they find the questions confronting or unpleasant. A non-response test that was carried out in the framework of the Police Monitor 2001 showed that there was at least no indication of a systematic non-response. The people who refused to cooperate – i.e. people, who did pick up the phone, but who did not want to participate – did not differ significantly from those who did participate and their motivations

for non-cooperation generally were not related to the topic at hand.[229] In other words, the fear of the system administrators that current victims would be less inclined to participate was unfounded.

In addition, the behavioural list by which the nature of the stalking was measured consisted of only five items. Given that stalking can be made up of countless other courses of action, a rather narrow snapshot was taken. In the Police Monitor it is suggested that telephone calls are the most commonly experienced stalking behaviour, but the possibility that there are more commonly experienced behaviours that were not in the list cannot be excluded.

Another important limitation is that the data stem from 2001. These data are probably no longer indicative for the situation in the year 2010. Especially with a possibly quickly evolving phenomenon such as stalking, it may very well be that the extent of the problem has increased or decreased drastically over the years. Finally, just like in the Carnival study, the outcomes may have been influenced by loss of recall.

3.6. Conclusion

The already high prevalence numbers that were found in the Tilburg Carnival study are even surpassed by the Police Monitor data. With more than one in four women and almost one in five men reporting that they have been subject to repeated harassment at some point in their lives, stalking can be considered widespread in the Netherlands too. With a minimum of 1.4% of the women and 0.9% of the men, the same goes for 'new victimisation' in the previous 24 months.

Prevalence numbers of a similar magnitude were found in the studies by Purcell et al. (32.4% of women and 12.85% of men), Finney (23.3% of women and 15.2% of men) and Coleman et al. (23% of women and 13% of men). However, in comparison to the other ten population studies that were mentioned in Chapter 2, the numbers are rather high. As explained before, this discrepancy may find its origin in the fact that many Anglo-Saxon countries have included 'fear' as an element in their statutory definitions of stalking, a practice that finds resonance in the research definitions that were employed. Only if the behaviour has caused the victim to feel fear, the behaviour becomes relevant, not only to the criminal justice system, but also to the empirical researcher. In the Netherlands, however, subjective feelings of fear are legally irrelevant. If the subjective feelings of the victims had been taken into account, then the observed percentages would have been substantially lower. In the current sample, for example, 'only' 6 out of 10 respondents who had experienced repeated harassment felt threatened because of this behaviour.

The difference between the high outcomes in the current study and the more moderate findings of the Tilburg Carnival study can perhaps also be explained given the fear element. At first sight, the results of the two studies seem somewhat contradictory. Where prevalence numbers can rise substantially when people are allowed to self-define their victimisation, instead of using behavioural lists as the selection instrument, the study under consideration showed exactly the opposite effect: the previous estimations were amply surpassed. This was mainly caused by the occurrence of unwanted telephone calls. Perhaps the Dutch citizen

229 See *Politiemonitor 2001*, p. 109.

subconsciously links the concept of stalking to feelings of fear or threat, and behaviour that merely causes nuisance or that forms a non-threatening violation of the privacy may be not perceived as stalking.[230] Still, this behaviour can fall under the statutory definition of stalking. In the Explanatory Memorandum, it was emphasised that even the single act of making obscene phone calls (the so-called *hijgen*) is covered by Article 285b DCC as long as this happens with a certain duration, intensity and frequency.[231] The fact that 41.4% of the people who were only harassed by telephone felt threatened supports this line of thought.

There is a danger that even law enforcement agents are susceptible to such an intuitive link between stalking and fear. Future research into the perception of stalking amongst the Dutch population and law enforcement agents should provide evidence for this risk. This research would have to incorporate both the legal way of questioning (on the basis of the statutory definition) and the social scientific way (by means of behavioural lists) to enable a link with police data. Ideally, this research would also try to indicate the number of individual acts that were carried out in one stalking sequence and the length of time it took for the stalking to end. Although the concept of stalking as defined in the Police Monitor did contain a level of seriousness – making telephone calls could (under circumstances) be considered less serious than physically assaulting someone – the repetition, frequency, and duration of the incidents have disappeared from view. To estimate whether the reported harassment is also criminally relevant, the way in which it was inflicted needs to be studied. An alternative explanation for the decline in prevalence numbers could be that stalking – because of the preventive and repressive effect of criminal law? – has actually diminished over the past few years.

Next to the extent of the problem, the Police Monitor survey also supported the previously established connection between stalking and gender.[232] Women ran almost twice the risk of ever becoming the victim of stalking. Furthermore, in accordance with foreign literature, the offender in the present sample was often of the male gender as well. A remarkable finding was that the identity of 56% of the offenders was unknown. Only Purcell, Pathé & Mullen report a similar percentage of 42%.[233] The group of victims who were harassed by an unknown stranger, however, significantly differed from the victims who knew their stalker. They seemed to be affected by a type of stalking that was characterised by only one, usually telephonic, stalking tactic. In this situation, it is probably easier for the stalker to protect his or her anonymity.

Another extraordinary finding was that, in contrast to most foreign studies in which the large majority of the stalking cases had derived from previous relationships,[234] only 7.5% of the Dutch victims were harassed by an ex-partner. This presents a profound discrepancy with the international data as presented in Chapter 2. Tjaden & Thoennes, for example, found that 59% of the female and 30% of the male victims were harassed by an (ex-)partner. Part of the divergence is possibly caused by a different phrasing of the question.[235] In Tjaden & Thoennes,

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230 Also Jordan (2007).

231 *Handelingen II* [Parliamentary Proceedings of the Lower House] 1998/1999, 98, p. 5710. For an example from practice, see Hof Arnhem [Arnhem Court of Appeal] 13 april 2004, *LJN* AO8239.

232 For example, Tjaden & Thoennes (1998).

233 Purcell et al. (2002).

234 P.E. Mullen, M. Pathé & R. Purcell, *Stalkers and their victims*, Cambridge: Cambridge University Press 2009, p. 46.

235 Tjaden & Thoennes (1998).

the (previous) relationship between victim and offender was established with the help of four answering categories, while the Police Monitor worked with an open-ended question. Furthermore, Tjaden & Thoennes explicitly included current partners (half of the *intimate relation* stalkers harassed the victim while the relationship was still intact). The Police Monitor did not take a stance on this point, but maybe respondents did not consider behaviour that takes place in the context of an ongoing relationship to be 'stalking'. A final explanation may be that, in some important aspects, stalking in the Netherlands actually *does* differ from stalking abroad.

PART III
STALKING AND THE CRIMINAL JUSTICE SYSTEM

CHAPTER 4

CRIMINALISATION OF STALKING IN THE NETHERLANDS

4.1 Introduction

In this chapter the focus will be on the Parliamentary history and the content of Article 285b of the Dutch Criminal Code: the Article that criminalises stalking in the Netherlands. Although it was adopted without dissenting votes in the Lower House and without voting at all in the Upper House of Parliament, it will be shown in section 4.2 that Article 285b (Dutch) Criminal Code (hence: DCC) has a history that is characterised by fierce debates on the usefulness, necessity and legitimacy of criminalising stalking. As one of the members of Parliament rightly remarked during the discussions on the topic:

> There is something peculiar about the phenomenon of stalking (…). The peculiarity lies in the fact that every reasonable human being will oppose this phenomenon, but the question of whether this behaviour should be dealt with criminally is answered very differently.[236]

The constituent elements of Article 285b DCC will be dealt with in section 4.3. Because of the elusive nature of stalking, some of the elements were termed in an 'open' fashion and the legislator left much of their actual interpretation to the judiciary. With the help of the Explanatory Memorandum, Parliamentary discussions, academic literature and case law, the elements of the criminal provision will be explained, not only how they were intended in the first place, but also how they have been applied in practice. This exercise will help answer the questions of whether the requirements of Article 285b DCC are too stringent for successful prosecution, what bottlenecks prevent a conviction and also whether the courts are relatively strict or perhaps quite lenient in their application of the law.

4.2 Parliamentary history

In the Netherlands the public debate on the criminalisation of stalking commenced when several victims established the Anti Stalking Foundation *(Stichting Anti Stalking)* in January 1996.[237] The goal of the foundation was to support (fellow) victims, to provide the general public with information on stalking, and to strive for a specific criminal provision against stalking.

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236 Member of Parliament Balkenende, *Handelingen II* [Parliamentary Proceedings of the Lower House] 1998/99, no. 97, p. 5667 (my translation).

237 *Kamerstukken II* [Parliamentary Papers of the Lower House] 1997/98, 25 768, no. 5, p. 1.

Following their campaign and as a result of several cases that received extensive media coverage, public attention began to increase and politicians became aware of the importance of the matter.[238]

During the Parliamentary debate in 1997 on the Ministry of Justice budget, the then Minister of Justice, Mrs. Sorgdrager, promised to consider the criminalisation of stalking as a means of countering behaviour that consisted of 'annoyingly following' or 'annoyingly stalking' someone.[239] In an ensuing letter to the chairman of Parliament, she explained that in her opinion this wrong needed no redress through criminal prosecution for three reasons.[240] First of all, victims would not be willing to report the crime, because of the private nature of the matter. The privacy of the victim would suffer from criminal prosecution, since the media coverage would not only expand to the relationship of the stalker with the victim, but also to the motives of the perpetrator, which she thought were 'primarily of a sexual nature'. A second reason for not penalising the conduct was her expectancy that the collection of evidence by the Public Prosecution Service would be problematic, because a victim is unlikely to be stalked when he or she is surrounded by witnesses. Moreover, in the exceptional situation of third party presence, the witness would not be able to properly evaluate the nature and intent of the violation, since the violation usually holds no direct threat and since this person is unaware of the continuity of the violations. Finally, she considered the enforcement of a criminal provision problematic. Stalkers, who often suffer from obsessions, would not be easily deterred.

In the same letter the Minister did, however, indicate that the current means of repression were not working well either. A victim of excessive forms of stalking that were already partly covered by the Criminal Code could only be offered temporary relief when the stalker was placed in preventive custody. When the stalker had not resorted to physical violence, however, the legal criterion of 'a compelling reason of public safety that demands immediate deprivation of liberty'[241] was generally not met, thereby impeding the imposition of preventive custody in the first place. Civil restraining orders, furthermore, carried a heavy burden of proof and, once imposed, they were hard to enforce. In many cases neither the order, nor the incremental penalty payment could effectively stop the stalker. A final measure was to have the stalker involuntarily institutionalised in a psychiatric hospital under the Psychiatric Hospitals (Compulsory Admissions) Act *(Wet Bijzondere Opnemingen Psychiatrische Ziekenhuizen)*. Given the strict

238 A case that was reported extensively in the media was the one in which the famous Dutch guitar player Harry Sacksioni was stalked by a deranged fan. After talking to her once and handing her his signature in a record shop, the young woman followed him home and started a stalking campaign that lasted 23 years. The conduct included making telephone calls, breaking into his home, disrupting concerts, following him around and showing up during holidays. Despite several arrests, civil restraining orders and coercive admissions to a psychiatric hospital, the woman kept harassing Sacksioni (*Kamerstukken II* 1997/98, 25 768, no. 5, pp. 1-2).

239 *Kamerstukken II* 1996/97, 25 000 VI, no. 40, p. 1 (my translation).

240 *Ibidem*.

241 Article 67a paragraph 1 under b Code of Criminal Procedure (my translation).

requirements,[242] this option was only available in a limited number of cases and a permanent removal of the stalker from society was impossible.

Dissatisfied with the refusal and not convinced by the argumentation of the Minister of Justice, three members of Parliament decided to take the matter into their own hands and they drafted an initiative bill on the criminalisation of stalking.[243] The bill, which was dedicated to all the victims, uses the Dutch term *belaging* instead of stalking.[244] According to the most authoritative dictionary of the Netherlands, *Van Dale's Groot woordenboek der Nederlandse Taal*, *belagen* is to 'deceitfully and covertly threaten (another person's life or liberty)'.[245] In case of *belaging* someone is being deliberately repetitively harassed by another person.

The reason for drafting the bill was that victims and the police had been insisting on an effective tool against stalking for years. In the absence of a criminal provision the police had to notify the victim that no consecutive action could be taken by them, since no crime had been committed. The criminal provisions that were in place were considered insufficient and many victims who wanted to file a report were discouraged by the refusal of the police to intervene.[246] Moreover, alternatives such as civil restraining orders or coercive psychiatric hospitalisation were hard to obtain and often ineffective.[247] The initiators thought that 'in concrete situations a specific penalisation of stalking [can] contribute to the fight against the behaviour of the stalker and it can improve the safety of the victim'.[248] The Explanatory Memorandum seems to refer almost exclusively to the protection and the safety of the victim as the main reason for criminalisation. When asked for clarification on this point by the Committee of Justice, the initiators hastened to add that their most important consideration had been that stalking behaviour deserved punishment.[249]

In response to the negative assessment of the Minister of Justice, the initiators counter argued that in their opinion the willingness of victims to report stalkers would increase considerably once there was a Criminal Code with sufficient possibilities to prosecute and convict a stalker. Furthermore, by allowing prosecution only after a complaint, victims themselves would be able to decide whether or not they could endure the publicity generated by a trial and the possible infringement on their privacy. Moreover, many victims had not even had a prior intimate relationship with their stalker.

The argument that the public prosecutor would have difficulty obtaining evidence was not

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242 The Act specifies the following criteria: 1) The person involved has a mental disorder (or a diminished mental capacity) 2) The mental disorder causes danger to the person himself, to others or to the general safety of persons or goods 3) The danger cannot be averted through the intervention of persons or institutions outside a psychiatric hospital 4) The person involved does not show any signs of the necessary willingness to be treated (Article 2 paragraph 2 and paragraph 3 in conjunction with Article 1 paragraph 1, under d and f).

243 They were the members Dittrich, Swildens-Rozendaal and Vos. *Kamerstukken II* 1997/98, 25 768, no. 1.

244 *Kamerstukken II* 1997/98, 25 768, no. 5, p. 1.

245 C.A. den Boon & D. Geeraerts (eds.), *Van Dale. Groot woordenboek van de Nederlandse taal*, Utrecht: Van Dale Lexicografie 2005, p. 346 (my translation).

246 *Ibidem*, pp. 2-3.

247 *Ibidem*, p. 6 and pp. 12-13. However, the initiators could not find any quantitative data on the (in)effectiveness of civil restraining orders.

248 *Ibidem*, p. 7.

249 *Kamerstukken II* 1998/99, 25 768, no. 7, p. 2.

accepted either. Evidentiary requirements were better left up to the public prosecutor and the courts instead of the legislator and, besides, considerations of this sort had not stopped the legislator in the past. Rape, for instance, which is generally viewed as an offence that is hard to prove, had nevertheless been criminalised.

The final claim of the difficult enforceability of a criminal provision was rejected by stating that the enforcement would be entirely dependent on the willingness of the police to take a report seriously and of police capacity that would be made available to fight stalking.[250]

In accordance with Article 115 of the Rules of Procedure *(Reglement van Orde)* of the Lower House, the bill was presented to the Council of State *(Raad van State)* first, before the Parliamentary Committee of Justice was allowed to comment on it. In addition, the initiators sent the bill to the Netherlands Association for the Judiciary *(Nederlandse Vereniging voor Rechtspraak)* and the Netherlands Bar Association *(Nederlandse Orde van Advocaten)* as well. Next to some clarification in the initial Explanatory Memorandum, this resulted in the placement of stalking in Article 285b immediately after 'intimidation',[251] in the addition of 'intent' as an element and in opening up the possibility of detention under a hospital order *(terbeschikkingstelling* or *TBS)* as a corrective measure in cases of stalking. Apart from three political parties that expressed their doubts on the necessity of criminalising stalking, the other members of the Committee of Justice were in favour of the insertion of Article 285b in the Criminal Code.[252]

The ensuing oral debate in the Lower House of Parliament was fierce and, even though several political parties were very critical, the bill was eventually adopted without any dissenting votes.[253] The discussion in the (Committee of Justice of the) Upper House of Parliament went equally well. The senators even accepted the bill without voting.[254] On the 12th of July 2000, with its publication in the Bulletin of Acts and Decrees *(Staatsblad)*, the Act finally came into force.[255]

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250 All these counterarguments can be found in *Kamerstukken II* 1997/98, 25 768, no. 5, pp. 9-11.

251 The initiators had intended to place stalking under Title XX (assault), but the criticism of the Council of State brought them to place it under Title XVIII (crimes against personal freedom) instead (*Kamerstukken II* 1997/98, 25 768, no. 4, p. 5).

252 *Kamerstukken II* 1998/99, 25 768, nr. 7, p. 1.

253 *Handelingen II* 1998/99, no. 103, p. 5938.

254 *Handelingen I* [Parliamentary Proceedings of the Upper House] 1999/2000, no. 28, p. 1372.

255 *Staatsblad* 2000, 282.

4.3 Article 285b Dutch Criminal Code

Article 285b of the Dutch Criminal Code consists of two paragraphs and it reads as follows:

1. He who unlawfully, systematically, intentionally intrudes upon another person's privacy with the aim of forcing that person to do something, to refrain from doing something, to tolerate something or to instill fear in that person, is liable, as guilty of stalking, to a prison term with a maximum of three years or a fine of the fourth category.
2. Prosecution can only occur on the complaint of the person against whom the crime was committed.[256]

In this section, the constituent elements of the Article will be discussed.

4.3.1. Unlawfully

The element 'unlawfully' can be found in many other criminal provisions. The legislator includes 'unlawfully' in articles that would otherwise have too wide a scope, since the criminalised behaviour often happens lawfully.[257] Usually the term is taken to mean that a person acts 'without authority'.[258] In a stalking context it means that there is 'no individual, subjective right acknowledged by positive law' to behave in a certain fashion.[259] The legislator clarifies the term by giving the example of a bailiff, who repeatedly summons a debtor through telephone calls, letters or other activities to pay up. These acts are probably unwanted by the person who is subjected to them and they may even provoke fear in that person. Still it was the explicit intention of the legislator to make an exception for creditors and other people who have a subjective legal right to repeatedly intrude upon another person's privacy.[260]

Another meaning of unlawfully is 'without the permission of the victim'.[261] During the

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256 My translation of: '1. Hij, die wederrechtelijk stelselmatig opzettelijk inbreuk maakt op eens anders persoonlijke levenssfeer met het oogmerk die ander te dwingen iets te doen, niet te doen of te dulden dan wel vrees aan te jagen wordt, als schuldig aan belaging, gestraft met een gevangenisstraf van ten hoogste drie jaren of een geldboete van de vierde categorie. 2. Vervolging vindt niet plaats dan op klacht van hem tegen wie het misdrijf is begaan.'

257 J. de Hullu, *Materieel Strafrecht. Over algemene leerstukken van strafrechtelijke aansprakelijkheid naar Nederlands recht*, Deventer: Kluwer 2006, p. 180. For this exact reason the Council of State was against the inclusion of 'unlawfully'. The Council considered stalking unlawful as a rule and the behaviour could be justified only in exceptional circumstances. (*Kamerstukken II* 1997/98, 25 768, no. A, p. 3).

258 J.W. Fokkens & A.J.M. Machielse (eds.), *Noyon-Langemeijer-Remmelink's Wetboek van Strafrecht*, Deventer: Kluwer 2004, supplement 128, note 6 to Article 282.

259 *Kamerstukken II* 1998/99, 25 768, no. 5, p. 15 (my translation). They opted for what legal doctrine calls the 'restricted interpretation' of unlawfulness (*Kamerstukken II* 1998/99, 25 768, no. 7, p. 14).

260 *Kamerstukken II* 1998/99, 25 768, no. 5, p. 15. The legislator also explicitly mentions demonstrators, police officers who repeatedly observe a suspect (*Handelingen II* 1998/99, no. 98, p. 5696) and journalists who persistently look for information (*Kamerstukken I* [Parliamentary Papers of the Upper House] 1999/2000, 25 768, no. 67a, p. 9).

261 C.P.M. Cleiren & J.F. Nijboer (eds.), *Strafrecht. Tekst & Commentaar*, Deventer: Kluwer 2006, p. 1115. However, this viewpoint was not repeated in the 2008 version of their Commentary (C.P.M. Cleiren & J.F. Nijboer (eds.), *Strafrecht. Tekst & Commentaar*, Deventer: Kluwer 2008, p. 1225).

discussions in Parliament the initiators indicated that this is a valid interpretation of unlawfulness in cases of stalking as well.[262]

Since the term unlawfully is included in the article, this means that the public prosecutor has to prove that the behaviour was unlawful. The legislator did not anticipate much difficulty with proving the unlawfulness. If the alleged stalker is of the opinion that he did have a right to repeatedly contact the other person, then it is up to the suspect to bring those arguments to light.[263]

It appears that the legislator was right in predicting the ease with which 'unlawfulness' would be accepted by the courts. In his opinion on a Supreme Court case, Advocate General Knigge argued that intruding upon another person's privacy is almost per definition unlawful. Only in exceptional cases can the intrusion be justified.[264] Many pleas challenging the alleged unlawfulness of the harassment have therefore been rejected.[265]

So far four exceptional circumstances may be derived from case law in which the unlawfulness is not self-evident or at least needs some further clarification. First of all, when a parent tries to contact his or her children, for instance in accordance with a legal arrangement concerning parental access, unlawfulness cannot readily be assumed. This changes once a parent goes too far in his attempts and starts to terrorise the person who frustrates the parental arrangement.[266]

The second situation which calls for more caution is one in which the suspect repetitively contacts a public institution or a person in his or her capacity as a public servant. The 's-Hertogenbosch Court of Appeal, for example, considered demonstrating in front of the

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262 *Handelingen II* 1998/99, no. 98, p. 5696 and *Kamerstukken I* 1999/2000, 25 768, no. 67a, p. 9.

263 *Kamerstukken II* 1998/99, 25 768, no. 5, p. 16. This interpretation seems incorrect. If the unlawfulness is an element in the statutory definition of an offence, then it is up to the public prosecutor to prove that there was no subjective right to behave in a certain fashion. If unlawfulness is not an element, it is up to the suspect to provide justification for the behaviour. It seems as if the initiators mixed the two doctrines up in the final Explanatory Memorandum. A correct interpretation can be found in *Kamerstukken II* 1997/98, no. A, p. 3.

264 HR [Hoge Raad, Netherlands Supreme Court] 7 februari 2006, *LJN* AU5787 paragraph 46 of the conclusion.

265 For example, Rb Leeuwarden [Leeuwarden District Court] 20 december 2007, *LJN* BC1615 in which the fact that the accused still had a key to the victim's shed and the fact that the victim possibly owned him money could not take away the unlawfulness. The same was true for the defence that the acts of the accused 'should be viewed in the context of the divorce procedure' (Hof Arnhem [Arnhem Court of Appeal] 9 september 2008, *LJN* BF0267), that the behaviour had originated from the settlement after a break-up (Hof Leeuwarden 15 september 2009, *LJN* BJ7691), or that the suspect just wanted some items back from his ex-partner (Rb Zutphen 29 april 2009, *LJN* BI2438). Even the fact that the stalker was still married to her victim did not remove the unlawfulness (Rb Utrecht 28 augustus 2006, *LJN* AY8373). Also the plea that the stalker had no idea of the unlawfulness of the behaviour was rejected (Hof Leeuwarden 20 oktober 2009, *LJN* BK0727; Hof Arnhem 10 augustus 2009, *LJN* BJ4912).

266 Rb Zwolle 16 maart 2007, *LJN* BA0909. In the case before the Maastricht District Court, the claim that the systematic behaviour was lawful because the father had only intended to maintain contact with his children was dismissed, since the evidence indicated that the acts were not (exclusively) focused on contact with his children (Rb Maastricht 27 maart 2002, *LJN* AE0796). When a mother who was accused of stalking her daughter invoked her legal duty to raise her underage children, the court stated that parents are in principle allowed and even legally obliged to take the necessary care and responsibility for the mental and physical wellbeing of their minor children. However, in the underlying case the court argued that the victim had left the parental house with the permission of her parents after an assault and that the victim had indicated on several occasions that she did not appreciate any contact with her mother. The mother could and should have used a different manner to remain informed of her daughter's wellbeing.

home of a female politician justified, given that the demonstration was directed at her as a representative of the people.[267] This changes, once the intrusion becomes systematic. The Arnhem District Court decided that although a citizen is free to contact the government, this did not alter the fact that calling the Mayor's Office hundreds of times, calling the Mayor himself on his private phone on thirty occasions, spreading slanderous pamphlets, and posting in front of the Major's home is unlawful given the consistency of the behaviour.[268]

In both these situations – that of the parent and that of the person seeking redress from the government – it appears that the initial lawfulness of the behaviour can be dissolved by behaviour that is considered systematic due to its nature, duration and frequency. Perhaps 'unlawfulness' can be interpreted in the sense that the threshold for a systematic intrusion lies a little higher in cases that fall under these specific circumstances. It could be that a father is allowed make more phone calls to his ex-wife in order to establish some contact with his children than a man who just wants to communicate with his former girlfriend.

This is not the case in the third situation in which unlawfulness may be hard to prove, namely the situation in which the victim has agreed to the contact. Regardless of the nature, duration and frequency of the behaviour, if the other person gave permission, then there probably is no unlawfulness.[269] The permission of the victim is closely related to the element of intrusion ('to intrude upon') and will be further dealt with in section 4.3.4.[270]

The final justification that could be found in case law is when the contact has a legitimate purpose. From the content of contested text messages the Breda District Court could derive that the accused and his ex-partner had maintained regular contact after their break-up. Those messages were often related to the settlement of business affairs as a result of the separation. The Court ruled that messages related to business affairs could not be considered unlawful.[271]

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267 Hof 's-Hertogenbosch 16 december 2008, *LJN* BG7134. Equally justified were the accused's repetitive phone calls to the provincial government building to try to make an appointment with the politician and also his phone calls to her private house, since he had subsequently respected her wish not to be called on that number again. The Roermond district court endorsed that a Mayor should be able to withstand some criticism, but then this criticism should be of a professional nature (Rb Roermond 1 juli 2009, *LJN* BJ2331).

268 Rb Arnhem 29 oktober 2008, *LJN* BG2112.

269 For example, HR 10 februari 2009, *LJN* BG6541. Here the Supreme Court ruled that the cassation plea that sending text messages is only unlawful if the addressee has indicated at least once to the sender that she does not wish to receive these messages could not result in cassation with a referral to Article 81 of the Judiciary (Organisation) Act *(Wet op de Rechterlijke Organisatie)* (hence: RO). Article 81 RO says that if the Supreme Court considers that a complaint that has been filed cannot result in cassation and does not warrant the answering of questions of law in the interest of the uniform application of the law or the development of the law, it may confine itself to this consideration when stating the grounds for its decision. From Advocate General Jörg's opinion on this judgment we can derive that the Supreme Court probably came to this judgment on the basis of the overwhelming evidence that the victim had indicated that the offender's behaviour was unwanted and that the offender was aware of this fact.

270 A consequence of (also) expressing the absence of permission in 'intrude upon' is that the intent of the stalker must be directed at the undesirability of the behaviour as well.

271 Rb Breda 26 januari 2007, *LJN* AZ7150.

4.3.2. Systematically

To qualify as stalking, the intrusion upon another person's privacy has to be done systematically. Groenhuijsen considers this element to be the core of the offence.[272] It caused a lot of debate in Parliament, but also in academic literature and in court, for when can a certain course of conduct be considered 'systematic'? In other words: is there a lower limit to stalking?

In the initial Explanatory Memorandum, the threshold for systematic behaviour was relatively low. The only explanation that was given was that the conduct had to be carried out according to a premeditated plan, not by mere coincidence.[273] Placing one obituary notice, making one disturbing phone call and delivering one funeral wreath could already constitute stalking.[274] This minimalistic approach could not satisfy the Council of State. It advised to attune the interpretation of systematically to the one that is given in the Special Powers of Investigation Act *(Wet Bijzondere Opsporingsbevoegdheden)*, a statute that provides a legal basis for investigative methods of the police and the Public Prosecution Service that are likely to infringe upon a person's privacy. In this statute, 'systematically' is defined as 'with a certain intensity, duration and/or frequency'.[275] It is more than a mere repetition. 'Repeatedly' simply means that there have to be more than two acts, 'systematically' also expresses a certain intensity and an acting according to a plan.[276]

This still leaves ample room for interpretation.[277] After questions from the Lower House, initiator Dittrich explained that the term 'systematically' in the stalking provision should be distinguished from the one in the Special Powers of Investigation Act.[278] Criminal procedural law is about the powers of the police so it is logical to have a clear, unambiguous understanding of systematic observation. It is hard to be too careful when it comes to formulating the powers of the police. Acts performed by government officials are subject to more scrutiny and stricter regulation than those by citizens.[279] Furthermore, it stands to reason that the explanation of the term 'systematically' is less ambiguous when public investigation is concerned, since this always involves only one sort of behaviour, namely observation, whereas stalking usually

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272 M.S. Groenhuijsen, 'Stalking. Stalking als interventierecht', *Delikt & Delinkwent* (28) 1998-6, pp. 521-526.

273 *Kamerstukken II* 1997/98, 25 768, no. 3, p. 15.

274 *Ibidem.* It is unclear whether this specific combination of behaviours would still constitute stalking under the final Explanatory Memorandum. The initiators did not follow up on a question from Member of Parliament Halsema, who explicitly inquired into this matter (*Handelingen II* 1998/99, no. 97, p. 5668).

275 *Kamerstukken II* 1998/99, 25 768, no. 7, p. 13.

276 *Handelingen II* 1998/99, no. 98, p. 5696.

277 Mrs. Halsema indicated that the explanation of 'with a certain intensity, duration and/or frequency' still leaves too much room for interpretation (*Handelingen II* 1998/99, no. 97, p. 5668). The practice of investigation had shown that there was still a great deal of uncertainty.

278 *Handelingen II* 1998/99, no. 98, p. 5696; a viewpoint that is endorsed by J. W. Fokkens & A.J.M. Machielse (eds.), *Noyon-Langemeijer-Remmelink's Wetboek van Strafrecht*, Deventer: Kluwer 2006, supplement 137, note 5 to Article 285b.

279 Because of this, the investigative acts of the police will more readily be considered 'systematic' than those of a private citizen. This, however, does not automatically mean that when there is no intrusion upon a person's privacy in the light of the Special Powers of Investigation Act, that there cannot be an intrusion on a person's privacy under Article 285 DCC (AG Jörg's opinion on HR 29 juni 2004, *LJN* AO5710).

consists of a combination of different sorts of acts.[280] Dittrich concluded that the required intensity, duration and frequency for criminal relevance would vary each time or in each case, stating that: 'Because these acts can be so different from each other, we cannot indicate that a 'certain duration' can be for example a week or a month, because then we would get […] that a somewhat shrewd stalker could circumvent it.'[281]

The deliberations in the Lower Chamber show furthermore that stalking is not necessarily a combination of different acts, but that it can also consist of only one type of behaviour. Even the single act of making obscene phone calls can be criminally relevant if the calls are made with a certain duration, intensity and frequency.[282] The further interpretation of 'systematically' was left up to the judiciary.[283]

But legal practice has not provided a lower limit of stalking either. According to Advocate General Jörg, this would be contrary to the law's system. By formulating a lower limit in the sense of a minimal number of confrontations within a certain time span, the stalker could easily adjust his behaviour so as to stay within the legal boundaries.[284] In line with the Parliamentary debate, the Supreme Court decides upon the basis of the three factors (nature, duration and frequency) whether certain behaviour is systematic.[285] It has thereby replaced 'intensity' with 'nature' and – in more recent judgments – with 'intrusiveness'.[286]

Nierop argues that duration and frequency are not the decisive factors in the assessment

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280 See also Advocate General Jörg's opinion on HR 29 juni 2004, *LJN* AO5710. Jörg adds furthermore that the background of 'systematically' differs. The Special Powers of Investigation Act regulates secret operations aimed at discovering relevant aspects of a person's privacy. The person under investigation is not supposed to notice anything. Stalking, on the other hand, is meant to have this person take notice.

281 *Handelingen II* 1998/99, no. 98, p. 5696 (my translation).

282 *Ibidem* p. 5710. See for an example from practice Hof Arnhem 13 april 2004, *LJN* AO8239 or Rb Assen 6 oktober 2009, *LJN* BJ9667.

283 *Kamerstukken I* 1999/2000, 25 768, no. 67a, p. 8.

284 HR 29 juni 2004, *LJN* AO5710, paragraph 31.

285 See, for example, HR 1 juni 2004, *LJN* AO7066. In HR 10 februari 2009, *LJN* BG6541 Attorney-General Jörg concludes that the Supreme Court in establishing 'systematically' pays attention to 'the nature, the duration, the frequency and the intensity of the acts, on the circumstances under which they have taken place and the influence thereof on the privacy and the personal freedom of the victim'. In other words, there would be six factors instead of three. To substantiate his claim he refers to HR 29 juni 2004, NJ 2004, 426 with a comment by De Jong. In that case, however, the Supreme Court used that phrase to explain the elements 'intrude upon another person's privacy'.

286 See, for example, HR 7 februari 2006, *LJN* AU5787. Duker's suggestion to explain this change is that the Supreme Court would want to bring together both the 'nature' and the 'intensity' in one term (M.J.A. Duker, 'De reikwijdte van het belagingsartikel', *Themis* (168) 2007-4, pp.141-154). AG Vellinga seems to accept this interpretation. Referring to Duker's article he says that also the nature of the acts can play a role in establishing 'systematically'. In itself the convincingly proven facts, the sending of letters and cards, are not very intrusive. This changes, however, when we look at the content of the mail that was sent (HR 11 maart 2008, *LJN* BC6254, paragraph 44 and note 13). Unfortunately, the Supreme Court's judgment in this case did not concern the element 'systematically', so the exact interpretation of 'intrusiveness' is still unclear. It is plausible, however, that the intrusiveness of certain behaviour is too closely connected to the duration, frequency and nature of the violation to assess it separately. Probably the combination of duration, frequency, nature and other circumstances (such as incidents that occur at night versus those that occur in the daytime) determine the intrusiveness as a whole. This would make intrusiveness the umbrella concept and it would make 'systematic' equal intrusive.

of 'systematically'.[287] Whether a certain course of conduct is systematic depends for the most part on the intrusiveness of the behaviour. In a case in which the stalker contacted the victim fourteen times in a period of over two years, Advocate General Vellinga concluded that this frequency was not necessarily systematic, but that the nature of the contact was.[288]

Although neither the Supreme Court, nor any of the lower courts have taken an active stance in the relative importance of intrusiveness in comparison to duration and frequency, it is true that a great variety exists in judgments when it comes to the duration or the frequency of the stalking. There are several convictions for stalking that only lasted a couple of days[289] and the frequency ranged from four to 5732 incidents in one case.[290]

Next to duration, frequency and intrusiveness, other factors have emerged in case law that can tip the scale in the favour of the Public Prosecution Service. If the behaviour consists of other criminal offences, such as intimidation, vandalism or trespassing, then a court is more likely to classify it as stalking. The same holds true when a stalker has had a prior conviction for stalking and when early attempts to stop the stalking have remained unsuccessful.[291]

All in all, it seems that case law cannot provide many specific clues as to when a legitimate course of conduct turns into stalking. However, there have been no cases before the Supreme Court that were judged unsystematic. Of the (published) cases before the lower courts, there have been only a few in which the lower threshold of 'systematically' was not met.[292] The Maastricht District Court ruled, for example, that a total of four incidents within eleven weeks – one incident in which the accused annoyingly pursued the victim by car and three incidents in which he drove slowly past her house – were intrusions upon the victim's privacy. These intrusions, however, were not systematic enough to convict the accused for stalking, given the nature, duration and frequency of the acts.[293]

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287 C.J. Nierop, *Liefdesverdriet en stalking. De reikwijdte van het belagingsdelict in Nederland en Amerika*, Tilburg: Celsus juridische uitgeverij 2008, pp. 33-34.

288 HR 11 maart 2008, *LJN* BC6254, paragraph 44.

289 For example, Rb Zwolle 10 april 2008, *LJN* BC9409 (four days); Rb Zutphen 30 augustus 2006, *LJN* AY7190 (eleven days); and Rb Groningen 18 mei 2006, *LJN* AX2330 (two stalking cases, one lasting 21 days, the other one lasting four days). In HR 30 mei 2006, *LJN* AW0476 the Supreme Court overruled a judgment by the Amsterdam Court of Appeal in a supposed case of stalking that lasted only one single day. Since the Supreme Court's ruling did not concern the systematic character of the conduct, it is still unclear whether behaviour that lasts only one day can be classified as stalking. In contrast to what was stated in the ground for appeal in cassation, Advocate General Knigge thinks this is possible. See also Duker (2007), p. 152.

290 Rb Dordrecht 12 juni 2008, *LJN* BD3819 (four incidents in four days) and Hof Arnhem 13 april 2004, *LJN* AO8239 (5732 phone calls in one month). The Supreme Court upheld a decision by the Amsterdam Court of Appeal that involved only seven confrontations in five months (HR 29 juni 2004, *LJN* AO5710).

291 Duker (2007), p. 153.

292 Not systematic enough were: two telephone calls from penitentiary (Rb Maastricht 12 november 2008, *LJN* BG6200), five letters and one possible observation of the suspect near the victim's house and the school of the victim's children in seventeen months (Rb Roermond 16 juni 2008, *LJN* BD3975); three incidents within three days (a daughter destroyed her mother's window twice and one time she stayed in her mother's home against the latter's wishes; Rb Maastricht 23 mei 2008, *LJN* BD2353); some threatening messages during two days (Rb Rotterdam 28 april 2009, *LJN* BI2713) and one incident (refusing to leave the victim's home; Rb Assen 1 september 2004, *LJN* AQ8130). The fact that the stalker had been convicted for stalking the same victim prior to this indictment did not make a difference.

293 Rb Maastricht 10 mei 2005, *LJN* AT5386.

On the other hand, in a case that showed a remarkable resemblance to this one, the Middelburg District Court decided that four incidents within five weeks *were* systematic enough.[294] In this case the suspect had followed the victim by car 'in an annoying and intimidating manner' three times in a row and on another occasion he was seen sitting in his car in the victim's street. The Court took into account that the incidents had happened during the night; that the victim was vulnerable because she had been alone on her bike; and that the incidents had happened within the relatively short time span of only five weeks.

It is safe to say that neither the legislator nor legal practice have come up with a fixed lower limit of stalking in terms of duration, intrusiveness or frequency. It appears that every case should be judged on its own merits. Whether the behaviour is systematic depends on the specific combination of frequency, duration and intrusiveness and their interaction. Behaviour which is not particularly intrusive can be systematic as long as it is carried out at a high frequency and/or during a long period of time and vice versa.[295] In this evaluation intrusiveness may be of greater importance than frequency or duration.

4.3.3. Intentionally

On the advice of the Netherlands Association for the Judiciary and the Netherlands Bar Association, the initiators included the element 'intentionally' in the criminal provision.[296] In Dutch law a distinction is made between crimes that are committed intentionally (*dolus*) and crimes that are committed through negligence or carelessness (*culpa*). Since stalking through negligence is inconceivable, the inclusion of intent was the obvious choice.[297]

If the definition of a crime contains the word 'intentionally' *(opzettelijk)* it has to be proven that the intent of the perpetrator was directed at all the elements of the crime that follow the word 'intentionally'. It follows that the perpetrator's intent does not have to be directed at the elements 'unlawfully' or 'systematically', since these elements precede the word 'intentionally',[298] but the 'intrusion upon a person's privacy with the aim of forcing that person to do something, to refrain from doing something, to tolerate something or to instill fear in that person' must have

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294 Rb Middelburg 19 november 2008, *LJN* BG4785.

295 *Ibidem*. Also Rb Maastricht 10 mei 2005, *LJN* AT5386.

296 *Kamerstukken II* 1997/98, 25 768, no. 5, pp. 14-15. This decision was not self-evident. In an earlier draft of the Explanatory Memorandum, the initiators preferred to leave the word 'intentionally' out. They feared that the burden of proof would be too high (*Kamerstukken II* 1997/98, 25 768, no. 3, p. 13). The Council of State, furthermore, argued that the criminal intent was already imbedded in the words 'systematically intrude' (*Kamerstukken II* 1997/98, 25 768, no. A, p. 4). In the Netherlands the required intent can be implicitly embedded in the definition of the criminal offence by using words that express an intentional attitude on the part of the offender. According to the Council of State a systematic intrusion can never be conducted without criminal intent. This technically makes the inclusion of 'intentionally' superfluous.

297 M. Malsch, *De wet belaging. Totstandkoming en toepassing*, Nijmegen: Ars Aequi Libri 2004, p. 43. For example the Utrecht District Court dismissed the defence that the accused had not intentionally harassed her then husband and his new girlfriend by saying that intruding upon someone cannot happen through negligence (Rb Utrecht 28 augustus 2006, *LJN* AY8373).

298 For this reason, the plea that the accused had no idea that his behaviour was unlawful, since his former lawyer had told him that calling and hanging up on someone is legal, was dismissed (Rb Roermond 28 mei 2002, *LJN* AE3529). Also Rb Utrecht 28 augustus 2006, *LJN* AY8373.

been intentional.

The Dutch legislator wanted to make criminal intent 'colourless', meaning that the perpetrator must have realised the *fact* of his behaviour: he must have been aware of the scope of his conduct.[299] In order to be criminally liable, the stalker does not necessarily have to have been aware of the unlawfulness of the behaviour, the systematic character of the conduct, the fact that his behaviour was a crime, or that the victim conceived the fact as illegal or unlawful.[300]

The initiators did not anticipate any difficulties with proving the criminal intent of the stalker, especially not since the concept of 'conditional intent' or *dolus eventualis*[301] suffices for criminal liability.[302] In the Netherlands there are different sorts of 'intent' ranging from acting willingly and knowingly to acting in the awareness of a high degree of probability.[303] The concept of conditional intent is the weakest form of criminal intent. It lies on the boundary between intentional and culpable offences. It means that a person has 'consciously accepted the considerable probability' that his behaviour intrudes upon another person's privacy. This intent can be deduced from the statement of the suspect or 'objectively discernable circumstances'.[304] The odds of an acquittal on the ground of *un*intentional stalking are therefore negligible.[305]

4.3.4. To intrude (upon)

The element 'to intrude upon' expresses that the victim did not want the intrusion upon his private life. If the intrusion is wanted, then there is no stalking. The initiators illustrate this by giving the example of a person who receives obscene phone calls. If this person enjoys the calls and he expresses his enjoyment, then there is no criminally relevant intrusion. He who implicitly or explicitly grants permission for a certain act loses the right to complain, in other words: *volenti non fit iniuria*.[306]

Since the element 'intentionally' precedes the element 'intrude upon', the stalker must have known – or he must have consciously accepted the considerable probability – that the victim did not agree with his behaviour. In other words, the criminal intent must have been directed at the absence of permission. In cases of erotomania, where, in the stalker's perception, there is a relationship that is in fact non-existent, the intent requirement may not be fulfilled.[307]

Proving the absence of permission has raised some questions in (court) practice. Whether there is permission or not has to be deduced from statements by the accused or objectively

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299 *Kamerstukken II* 1997/98, 25 768, no. 5, p. 15. The plea that the accused had acted with 'the best intentions', for example, could not convince the Court (Rb Middelburg 15 juni 2006, *LJN* AX8730).

300 *Kamerstukken II* 1997/98, 25 768, no. 5, p. 15.

301 P.J.P. Tak, *The Dutch criminal justice system*, Nijmegen: Wolf Legal Publishers 2008, p. 71.

302 *Handelingen II* 1998/99, no. 98, p. 5697.

303 Tak (2008), p. 71.

304 *Kamerstukken II* 1997/98, 25 768, no. 5, p. 15.

305 Yet, it has happened once. In Rb Alkmaar 21 februari 2007, *LJN* AZ9310, the accused successfully challenged the required intent, by saying that it had not been clear to him that the relationship with his (ex-)partner had ended and that she no longer appreciated his presence.

306 *Kamerstukken II* 1997/98, 25 768, no. 5, p. 16.

307 J. W. Fokkens & A.J.M. Machielse (eds.), *Noyon-Langemeijer-Remmelink's Wetboek van Strafrecht*, Deventer: Kluwer 2006, supplement 137, note 4 to Article 285b DCC.

discernable circumstances. In the case of threats or malicious treatment, there is no difficulty in assuming that the victim did not consent. However, when the stalking consists of the unsolicited sending of gifts, the intrusion can only be proven if the recipient has clearly indicated that he does not approve of these favours.[308] If this remains uncertain, intentional intrusion cannot be proven and acquittal should follow.

Sometimes the disapproval is expressed in a veiled manner. Given the intense reaction that may follow a rejection, people often try to let the rejected party down in a subtle and respectful way in order not to hurt this person's feelings even more. Instead of an explicit 'no', for example, they make up excuses to try to get out of a date. As a result, the message does not always come across.[309] Rather than taking the hint, the person who is in pursuit of love may, for instance, try to set a new date. It is fair to take the assessment of the average person as a guiding principle. If the average objective person can infer the rejection from the objectively discernable circumstances, then the absence of permission can be taken for granted.[310] According to Dittrich, a conviction requires a 'cognisable' and 'unambiguous' refusal.[311]

The possible ambiguity of the refusal has caused a certain amount of case law. After all, it is not always possible to infer an unambiguous refusal from the declaration of the suspect or the objectively discernable circumstances. In a Supreme Court case, the defence argued that the rejection of the victim had not been cognisable for their client given that the victim had contacted the defendant several times on her own initiative during the alleged stalking period. She had agreed to go to the circus with him and they had had lunch together a few times. It was unclear whether these meetings had taken place during the indicted period and whether the initiative had come from the victim. Advocate General Jörg concluded that, despite the behaviour of the victim, the undesirability of the intrusion was still recognisable. He arrived at that conclusion, because the defendant had declared earlier on that he knew that the victim did not appreciate his presence.[312] Furthermore, Jörg also seemed to weigh the fact that some of these meetings had arisen from the victim's desire to break up the relationship. The Supreme Court upheld the decision from the 's-Hertogenbosch Court, but did not consider these arguments intrinsically.

In another case, the defendant claimed to have been unaware of the disapproval of the victim as well. The argument was that the victim's reaction to his telephone calls varied constantly. At times she would hang up on him, but at other times she would engage in a conversation. For the Court, this changeable behaviour was insufficient to decide that the victim actually wanted to receive the telephone calls. Here – again – it was of vital importance that the victim had declared earlier on that she was unappreciative of the contact. In addition, the fact that there was a restraining order in place and the fact that part of their conversation concerned their children was also relevant.[313]

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308 *Ibidem.*

309 Nierop (2008), p. 8.

310 *Handelingen II* 1998/99, nr. 98, p. 5698.

311 *Ibidem.*

312 HR 13 september 2005, *LJN* AT7555.

313 Rb Dordrecht 20 februari 2007, *LJN* AZ8947. In another case the Court convicted the accused of stalking as well, despite the contact initiated by the victim, because he knew that she wanted him to stop approaching her (Rb Zutphen 28 maart 2007, *LJN* BA1589).

It appears that contacting the offender at the victim's own initiative is of marginal importance for the establishment of 'recognisability'. Occasionally giving in to the offender does not take away the criminal character of the behaviour as long as the victim has stated the undesirability of the contact at some point.[314]

This changes if the reaction of the victim was aimed to incite the stalker. Despite the fact that the victim had indicated that she no longer cared for contact with the defendant, the Breda District Court came to the conclusion that the multiple messages that were sent by him over the telephone did not constitute an intrusion because the victim had responded in a way that caused the suspect to react in return. By responding to the text messages of the suspect in a way that could clearly provoke a reaction in response, the victim had implicitly granted permission to the suspect to keep sending her messages.[315] However, the District Court of Roermond decided that, despite the provoking responses by the victim, the suspect was still liable for stalking. Even though the Court literally admitted that the victim had played a part in the continuance of the conflict situation, the nature and the frequency of the acts of the suspect – who eventually resorted to intimidating and threatening remarks – could still justify a conviction for stalking.[316] Perhaps the disproportional reaction of the stalker made the Court decide to judge against the suspect. The more disproportional the reaction of the stalker, the likelier it may be that shared culpability on the part of the victim will be overlooked.

Apart from a clear statement that the contact is unwanted, another factor that may be of importance is the intention with which the victim agrees to or initiates the contact. Conversations on practical arrangements, such as the children or the break-up of a relationship are more acceptable than, for example, inviting the suspect over to spend New Year's Eve together[317] or actively making an attempt at reconciliation with the suspect after a break-up.[318] Also living together and maintaining a relationship can result in an acquittal.[319]

Sometimes the capriciousness of the victim is discounted in the penalty. The frequent phone calls and letters by the victim after the – alleged – break-up could not prevent the 's-Gravenhage District Court from convicting the accused, but they were taken into account in favour of the accused in establishing the sentence.[320] For the Utrecht District Court even the fact that the victim possibly gave off signals *before* the indicted period of time that could have been interpreted by the accused as encouragements to carry on the contact led to a less

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314 Duker (2007), p. 150. In Rb Groningen 26 november 2009, *LJN* BK5503, the victim even came away with 100 text messages from her side.

315 Rb Breda 26 januari 2007, *LJN* AZ7150.

316 Rb Roermond 26 september 2008, *LJN* BF2270.

317 This was the case in Rb Maastricht 29 juni 2007, *LJN* BB2704. The Court was of the opinion that the situation must have been very confusing for the accused. On the one hand the victim had indicated that she no longer wanted contact with him – she had even sent him an official notice – but on the other hand she had initiated and agreed to this contact herself.

318 Rb Alkmaar 24 januari 2007, *LJN* AZ7198. Still, the 's-Hertogenbosch Court of Appeal argued that although the existence of an on-and-off relationship can cause much uncertainty on where the privacy of the victim begins, it does not by definition exclude the possibility of stalking between the parties involved (Hof 's-Hertogenbosch 20 juli 2005, *LJN* AU0203).

319 Rb Alkmaar 19 december 2006 *LJN* AZ5031.

320 Rb 's-Gravenhage 7 februari 2003, *LJN* AF4430.

severe penalty even though his knowledge of the outright undesirability of the intrusions *during* the indicted period was sufficiently established in court.[321]

4.3.5. A person's privacy

The right to privacy is 'the fundamental right to act in freedom while enjoying a safe private life'.[322] The privacy element was doubtless the most controversial of them all. Various members of both Houses of Parliament insisted repeatedly on a more precise definition of privacy. The way the initiators had presented it was too vague and in violation of the *lex certa* principle; the principle which prescribes that the scope of a criminal offence has to be sufficiently predictable for citizens so that they can adjust their behaviour to it. The term 'a person's privacy' was still under development and was considered insufficiently delineated by (case) law to serve as a constituent element of stalking.[323]

The alternative of a limitative enumeration of explicit stalking acts was rejected. Stalkers are very creative in finding new methods to harass their victims and the initiators feared that they would easily get round the criminal offence once a fixed number of possible stalking acts would be incorporated in its text.[324]

In an attempt to clarify the term, the initiators instead referred to Article 10 of the Dutch Constitution[325] and Article 8 of the European Convention of Human Rights (ECHR).[326] In line with the case law on the basis of the Convention, the initiators explained that there is an intrusion upon a person's privacy if the stalker intrudes upon a situation in which the victim could reasonably claim (a certain degree of) privacy. Privacy is a right, to which people are also entitled if they leave the closed parameters of their home, garden or premises. Someone who is working away from home can be stalked there as well.[327]

Following the European Court's judgment in the *Niemietz* case,[328] the initiators furthermore stated that the term 'privacy' is not solely about physical boundaries. Just as the concept 'home', it extends to spaces that are not fixed in time or place. According to the Court, the respect for someone's private life comprises also the right to establish and develop relationships with other human beings. From this right to private life should not automatically be excluded activities of a professional or business nature since it is in the course of their working lives that people often get into contact with others.[329]

A final specification of privacy was given during the discussions of the bill in the Lower House. Here the initiators followed the Supreme Court in saying that privacy means that 'as an individual you have to be able to live your own life uninhibitedly, to be yourself in an unrestrained

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321 Rb Utrecht 27 april 2007, *LJN* BA4073.

322 *Kamerstukken II* 1998/99, 25 768, no. 7, p. 6 (my translation).

323 *Kamerstukken II* 1997/98, 25 768, no. A, p. 4.

324 *Kamerstukken II* 1997/98, 25 768, no. A, p. 4.

325 *Kamerstukken II* 1997/98, 25 768, no. 5, p. 8.

326 *Kamerstukken II* 1998/99, 25 768, no. 7, p. 6.

327 *Ibidem* and *Kamerstukken II* 1997/98, 25 768, no. 5, p. 8.

328 European Court of Human Rights, 16 December 1992, *NJ* 1993, 400.

329 *Kamerstukken II* 1998/99, 25 768, no. 7, pp. 6-7.

way'. It conveys that a person does not have to be apprehensive all the time that, if that person takes part in public life, someone else will infringe upon his or her private life. So this person does not have to go through life constantly afraid, because others do not respect and accept his or her personal freedom.[330]

To sum up, a person should be able to go through life without having to fear constantly for infringements upon his or her privacy. In order for claims on the right to privacy to be successful there has to be a reasonable expectancy of privacy. This means that intrusions that take place close to a person's home or family will sooner fall under the scope of Article 285b DCC than those that are committed in a public area.[331] However, stalking activities that occur outside the private home are definitely not excluded from protection.

In assessing whether the privacy was violated the average objective person or peer is taken as an objective standard.[332] Would an average objective person think certain behaviour an infringement of privacy? This criterion prevents very nervous and insecure people who wrongfully assume that they are being harassed to successfully invoke the right to privacy. Only if other people under the same circumstances would consider the behaviour intrusive can Article 285b DCC be applicable.

Apart from sketching this general framework and giving some particular examples of stalking cases, the initiators did not define the term 'privacy' more specifically. They explicitly left this up to the courts,[333] which seemed to accept a violation of a person's privacy relatively easily.[334] Sending letters, text messages or flowers, making telephone calls, following the victim around and calling the victim names, for example, were considered violations of privacy. The Supreme Court furthermore confirmed that stalking does not necessarily have to take place within the confines of a person's home or workplace. Even if the behaviour occurred exclusively in a public area, this would not prevent a conviction on account of stalking.[335] The same goes for stalking that is perpetrated solely by contacting the friends, family and colleagues of the victim instead of contacting the victim directly.[336]

In addition, the breach of privacy does not have to be substantial. Although the Parliamentary history is ambiguous on this point – with one time referring to *profound* breaches of the privacy[337] and other times to a prevention from escalation through early interventions[338] – the Supreme

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330 *Handelingen II* 1998/1999, no. 98, p. 5694.

331 J.W. Fokkens & A.J.M. Machielse (eds.), *Noyon-Langemeijer-Remmelink's Wetboek van Strafrecht*, Deventer: Kluwer 2006, supplement 137, note 7 to Article 285b DCC. Also Nierop (2008), p. 40.

332 *Kamerstukken II* 1997/98, 25 768, no. 5, p. 8.

333 *Ibidem*.

334 Nierop (2008), p. 42.

335 HR 29 juni 2004, *LJN* AO5720. In this case the stalking consisted of sitting on a public bench outside the victim's home and waving at the victim.

336 For example Rb Dordrecht 29 mei 2007, *LJN* BA6060; Hof Leeuwarden 12 december 2006, *LJN* AZ4596, and Hof Arnhem 21 november 2006, *LJN* AZ4330.

337 *Kamerstukken II* 1997/98, 25 768, no. 5, p. 2.

338 *Ibidem*, p. 3.

Court decided that the law does not require the breaches to be substantial.[339]

Finally, an intrusion upon a person's privacy does not even have to consist of direct action. The Supreme Court upheld a decision of the Amsterdam Court of Appeal in which two accused had not made any attempts to avoid contact with their daughter and her children. Although the defence argued that the accused had driven through the victims' street, not to harass their daughter and grandchildren, but because this was a main road leading to the city's centre, the Amsterdam Court of Appeal argued that they should have taken a different route:

> [The] [a]ccused knew where the victims lived and was aware of the fact that they did not want contact with him and his co-perpetrator. By nevertheless visiting certain places on a weekly basis on set times during the indicted period and by driving certain routes by which there was a considerable chance of meeting the victims, which happened frequently, the accused and her husband have consciously sought the confrontation with one or more victim(s) instead of making attempts to avoid contact. By acting thus, they have systematically intruded upon the victims' privacy.[340]

When assessing the intrusion upon a person's private life, the Supreme Court takes into account 'the nature, the duration, the frequency and the intensity of the acts of the accused and the circumstances under which these have taken place and the influence thereof on the private life and the personal freedom of the victim'.[341] Examples of intrusive breaches of privacy are: making threats, making false accusations to the police and sending a slanderous fax to the work address of the victim.[342]

The Maastricht District Court uses as a rule of thumb that acts that directly 'penetrate' the victim's house (such as being physically present, ringing the doorbell, calling on the telephone, sending text messages, writing letters) are of a more serious nature than acts that take place outside the home (posting in front of the house, sitting on the pavement). Incidents that happen outside the victim's street are, in turn, less serious than incidents that happen in the street where the victim lives.[343] Advocate General Knigge, furthermore, considers a phone call to a private number more intrusive than angry telephone calls that are restricted to the work environment.[344]

Politicians also have a right to private life, but the nature of their activities and the (public) interests they promote imply that they have to endure intrusions upon their private lives to a higher extent.[345] If people are contacted in their capacity as employees of a public institution

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339 HR 15 november 2005, *LJN* AU3495. Advocate General Fokkens's concludes to HR 2 februari 2004, *LJN* AQ4289 that, although the Explanatory Memorandum mentions several very striking examples of stalking, especially to clarify the importance of criminalisation, it cannot be inferred that less serious forms of systematic intrusion on the privacy are not worthy of punishment.

340 HR 2 november 2004, *LJN* AQ4289 (my translation).

341 HR 29 juni 2004, *LJN* AO5710 shows the interrelation between 'to intrude upon someone's private life' and 'systematically'.

342 Advocate General Machielse (HR 19 september 2006, *LJN* AX9184).

343 Rb Maastricht 10 mei 2005, *LJN* AT5386.

344 HR 30 mei 2006, *LJN* AW0476, paragraph 35 of the conclusion.

345 Hof 's-Hertogenbosch 16 december 2008, *LJN* BG7134. One limit is when the messages sent are of a threatening nature (Rb Breda 28 september 2007, *LJN* BB4490).

and the contact relates to business affairs, the threshold for assuming a breach of privacy is higher as well.[346]

4.3.6. With the aim of forcing that person to do something, to refrain from doing something, to tolerate something or to instill fear in that person

'With the aim of' is a form of criminal intent that is directed at certain consequences or a certain result. Just like the element 'intentionally', the object must be directed at all the other elements that follow 'with the aim of', but unlike 'intentionally', the concept of conditional intent does not suffice.[347] It is not enough that the perpetrator has 'consciously accepted the considerable probability' that the victim felt forced to do something, to refrain from doing something, to tolerate something or that he or she felt fear because of his behaviour. The stalker must have willingly and knowingly acted with the deliberation to provoke the possible consequences for the victim.

The phrase 'to do something, to refrain from doing something and to tolerate something' is directly borrowed from the classical terminology in Articles 284, 285 and 317 of the Dutch Criminal Code.[348] The difference with these Articles and stalking is that not the objective effect of the behaviour, but the criminal intent of the perpetrator is central. Although 'with the aim of' requires an intent that is directed at possible consequences or certain results, it is not necessary that these consequences or results actually arise. Criminal liability is independent of the actual materialisation of the desired outcome, so in contrast to Articles 284 and 317 DCC, the public prosecutor does not have to prove that the victim has done something that he or she would not have done if it were not for the intrusion.

With 'fear' is meant 'an emotion that every normal human being would have under comparable circumstances'.[349] In contrast to many Anglo-Saxon countries or states, the Dutch anti-stalking provision does not require the victim to have experienced fear as a consequence of the stalking. The stalker only has to have had the intention to instill fear and even then 'fear' – being juxtaposed to doing something, refrain from doing something and tolerate something – is only one of the possible consequences that the perpetrator must have aimed for. An exceptionally equable victim, who does not feel fear or who does not act in reaction to the stalking, should not be worse off than a victim of a more nervous nature.[350] In other words, the law does not require that the victim has suffered emotionally from the intrusion upon his or her private life. What matters is whether the behaviour of the stalker and the adjoining intention are generally perceived as adequate to instill fear in an average person.[351]

According to Advocate General Knigge, the law is meant to protect people against very

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346 Rb Leeuwarden 14 maart 2006, *LJN* AV5251. Still, this is no licence for impertinent behaviour (Rb Leeuwarden 6 februari 2003, *LJN* AF3998). A chief public prosecutor can expect letters from prisoners who disagree with their imprisonment (Rb Roermond 16 juni 2008, *LJN* BD3975).

347 J. de Hullu, *Materieel strafrecht. Over algemene leerstukken van strafrechtelijke aansprakelijheid naar Nederlands recht*, Deventer: Kluwer 2009, p. 245.

348 *Kamerstukken II* 1997/98, 25 768, no. 5, p. 16. Although the Explanatory Memorandum mentions intimidation (Article 285 DCC), this Article does not in fact contain this specific phrase.

349 *Ibidem* (my translation).

350 *Ibidem*.

351 Nierop (2008), p. 43.

annoying behaviour.[352] Early interventions should be made possible in order to prevent escalation and drastic consequences for the victim. However, although there is no need to prove that the victim was frightened and although fear is only one out of four alternative aims that the suspect might have had, many courts still feel the need to show either that the victim has in fact been afraid or that it is common knowledge that stalking generally causes people to experience fear. This frequently happens to motivate the penalty.

Another thing that the public prosecutor does not have to do is to specify exactly what consequences the perpetrator intended to provoke. The Supreme Court ruled that the mere phrase 'to do something, to refrain from doing something, to tolerate something or to instill fear' has sufficient factual meaning in itself.[353] The indictment merely has to repeat the legal terminology.

By including 'with the aim of', the legislator wanted to limit the ambit of the article.[354] Systematic intrusions upon a person's privacy without an intention concerning the consequences cannot be classified as stalking. Academics, however, agree that the inclusion of 'with the aim of' barely limits the criminal offence.[355] In practice the required object intention will easily be assumed. From the systematic intrusion, the intent to force another person to tolerate the stalker's presence can simply be deduced.[356] The intention can be objectified. It is only necessary to assess whether a reasonable human being would think the combination of acts too extreme under certain circumstances.[357] Even an infatuated person who merely wants to be near the object of his affection can have intention if the objectively discernible circumstances give reason to believe so. Yet, there has to be some sort of knowledge in the stalker that the victim does not want the intrusion.[358] The ease with which 'with the aim of' is assumed is shown by the fact that there have only been a few cases in which the courts decided that the intention was absent.[359]

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352 HR 15 november 2005, *LJN* AU3495, paragraph 14 of the conclusion.

353 HR 31 januari 2006, *LJN* AU7080 and HR 14 september 2004, *LJN* AP4226. The same is, by the way, true for 'systematically' and 'someone's privacy'. However, the subsequent factual description of the acts that intruded upon the victim's private life needs to be as concrete as to make a derivation of the object intention from that description possible (Hof 's-Hertogenbosch 23 september 2004, *LJN* AR3680).

354 Nierop (2008), p. 42.

355 Nierop (2008), p. 44; Duker (2007), p. 145; Groenhuijsen, (1998), p. 525; De Jong (HR 29 juni 2004, *NJ* 2004, 426, with commentary by D.H. de Jong).

356 Duker (2007), p. 145.

357 *Handelingen II* 1998/99, no. 98, p. 5698.

358 *Ibidem*.

359 Rb Amsterdam 11 augustus 2007, *LJN* BB2340. According to the District Court the accused, by sending very personal letters with a certain frequency to the female presenter of a television show, had unlawfully and systematically intruded upon her privacy. However, since he only intended to raise her attention to a certain problem, the Court was not convinced that he had had the required intention. Also Rb Leeuwarden 28 november 2006, *LJN* AZ4877. Since the content of the text messages could not be retrieved, the intention of the accused – who claimed that the victim had contacted him in relation to some personal problems – could not be assumed. Finally, Rb Almelo 10 februari 2004, *LJN* AO3589.

4.3.7. Exclusive focus on the victim?

The vague definition of Article 285b DCC and the sometimes ambiguous interpretations given in the Parliamentary discussions allow for a very extensive interpretation of stalking.[360] The multiple attempts to restrict the scope of Article 285b DCC – for instance by including the element 'unlawfully'[361]– show that the initiators have constantly struggled with the unclear delineation of the offence. A tantalising idea in this respect comes from Advocate General Knigge, who proposed to consider the exclusive focus of the offender on the victim an implicit element of stalking.[362]

This idea did not come out of thin air. The initiators had already indicated that a final prerequisite to establish the unlawful systematic intrusion is that the behaviour has to be focused. It needs to be directed at someone. Although beggars or door-to-door salesmen can be a nuisance, the considerations in the Upper House illustrate that they do not fulfil the statutory requirements for stalking.[363]

Knigge elaborates on this thought and sees it as a means to distinguish criminally relevant behaviour from intrusions on the privacy that are annoying, but that stem from situational circumstances instead of an intent that is directed at the victim. As an example, he mentions the anti-social or mentally unstable neighbour, who likes to play loud music.[364] If unfocused intrusions of the privacy were to fall under the scope of Article 285b DCC, there would soon be a very large and undetermined number of victims who would be entitled to file a complaint. In theory, the neighbour could be prosecuted several times for the same noise nuisance. This would go against the *ne bis in idem* or double jeopardy principle.

Usually one can rid oneself of the misery by moving a few streets or even a couple of houses away. It is likely that the neighbour will not end his disruptive behaviour and that his new neighbours will be the next victims. This feature of exchangeability is crucial for Knigge. In his view, typical stalking is defined by an exclusive focus on one victim only. Victims cannot easily be exchanged. In contrast to the proposal, however, the Supreme Court did not adopt the exclusive focus on the victim as an implicit requirement to stalking.

In the conclusion to a later Supreme Court judgment, Knigge tried once more to have the Court comment on the stalker's focus.[365] Instead of labelling it an implicit element, he presented it as a factor that can be taken into account when establishing the 'intrusiveness' of the behaviour. Owing to the impersonal character, acts that are unfocused are bound to be less intrusive than acts aimed at a particular person. Again, the Supreme Court remained silent.

As a result, there is no definite answer on whether or not the Supreme Court sees 'exclusive

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360 See also the opinion of Advocate General Knigge, HR 30 mei 2006, *LJN* AW0476, paragraph 38. In another judgment he calls the element 'privacy' a notion that, if not boundless, then at least is not a very well-defined one (HR 7 februari 2006, *LJN* AU5787, paragraph 24 of the conclusion).

361 Dittrich stated that, by including unlawfully, the scope of the article was narrowed to some extent (*Handelingen II* 1998/99, no. 98, p. 5697).

362 HR 7 februari 2006, *LJN* AU5787, paragraphs 40-43 of the conclusion.

363 *Kamerstukken I* 1999/2000, 25 768, no. 67a, pp. 5-6.

364 HR 7 februari 2006, *LJN* AU5787, paragraphs 40-43 of the conclusion.

365 HR 30 mei 2006, *LJN* AW0476.

focus' as an indicator of stalking or at least as a factor that can help determine the intrusiveness of the behaviour. Still it seems sensible to take this notion into account. Not only did the initiators indicate that there needs to be a certain focus on the part of the stalker, it is also a way to limit the otherwise 'boundless' offence, at least to a certain extent. Acts that are completely unfocused, such as those performed by beggars or door-to-door-salesmen, should be left undisturbed by criminal law, albeit that the determining factor should not be the supposed interchangeability of victims. In contrast to what Knigge believes, many stalkers do not concentrate on one victim only. Sometimes they have multiple victims at the same time – with the stalkers having a focus on each and every one of them –, at other times, the stalking is completely dependent on the situational circumstances as well. The harassment of an ex-partner is often interrupted once the rejected party is involved in another relationship. When, in turn, this new relationship ends, the stalker may start to stalk his latest ex. From this viewpoint, ex-partners may be just as interchangeable as neighbours. The obsession does not necessarily relate to the victim as a person, but more to the capacity of the victim, such as the ex-girlfriend, the psychiatrist or the employer. Exclusive focus that is defined by the victims not being interchangeable is too narrow. What matters is whether the behaviour is focused on (a group of) victim(s) during a certain amount of time regardless of their interchangeability.

Knigge, furthermore, points out a passage in the Explanatory Memorandum, to the effect that these activities do not have to be confined to the victim only, also family members, the employer, colleagues, friends and acquaintances can be terrorised by the stalker.[366] Knigge interprets this and the subsequent sections as indicating that – in the view of the initiators – there is only *one* victim. The family members are not stalking victims themselves, they are only 'instrumental' in the sense that the perpetrator is trying to impose himself on the victim through them. Case law, on the other hand, seems to have adopted a more relaxed viewpoint on focus. Anybody who has suffered from the harassment, even as a mere instrument to hurt the 'main target' is entitled to file a complaint as long as the other elements of stalking have been fulfilled. The courts do not seem to differentiate between the victim that is the 'main target' and the 'collateral damage': the people who happened to be in the wrong place at the wrong time.

In short, exclusive focus on the victim certainly has potential, although perhaps not as exclusive as Knigge suggests. Whether exclusive focus in that respect is regarded as an implicit element, as a factor of 'intrusiveness', or as a factor that is embedded in 'a person's privacy'[367] is irrelevant.

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366 *Kamerstukken II*, 1997/98, 25 768, no. 5, p. 2, in: HR 7 februari 2006, *LJN* AU5787, paragraph 41 of the conclusion.

367 See Section 1.3 on the definition of stalking.

4.3.8. Prosecution can only occur on the complaint of the person against whom the crime was committed

The legislator decided to make stalking an offence that can only be subject to prosecution if the victim lodges a complaint.[368] This means that the victim not only has to file a report, but that he or she explicitly needs to request prosecution.[369] Without the complaint, the Public Prosecution Service is barred *(niet-ontvankelijk)*.[370] The victim may lodge a complaint for up to three months after the day that he or she became aware of the offence committed.[371] The person entitled to lodge a complaint is authorised to withdraw the complaint during eight days following the day on which the complaint was lodged.[372]

Making stalking a complaint offence was a direct reaction to the criticism of the former Minister of Justice, because the privacy of the victim would suffer from criminal prosecution. Although in most cases a written statement from the victim will suffice, the initiators thought the personal appearance of the victim in court as a witness to be almost unavoidable.[373] By allowing prosecution only after a complaint, it was left up to the victims to decide whether they wanted to be confronted with the consequences of criminal prosecution and whether they would be willing to take the risk of intimate details being revealed.[374] Another reason was that the victims could utilise the complaint as a means to put pressure on their stalker.[375] Furthermore, it expressed the principle of criminal law as an *ultimum remedium*.[376] Criminal law would have to step aside if a victim decided that he or she did not want the stalker to be prosecuted.

The risk of this construction is that some stalkers may scare their victims out of lodging a complaint or refusing to withdraw a complaint that has already been lodged.[377] The police and the Public Prosecution Service are then left empty-handed. For this reason, marital rape, for example, is no longer a complaint offence.[378] Although the initiators acknowledge this possibility, they decided to go along with the complaint requirement nevertheless. They did announce that this problem would be looked into during the evaluation of the law.[379]

In practice, paragraph 2 of Article 285b DCC has given rise to much debate in court on whether or not the victim has actually lodged a complaint. Many a defence counsel has argued that the case file did not contain an explicit complaint by the victim. The Supreme Court decided that when a file contains a report but not an explicit request to prosecute, a complaint may be

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368 See Articles 64 - 67 DCC.

369 Article 164 Dutch Code of Criminal Procedure (hence: DCCP). The complaint consists of filing a report combined with a request for prosecution.

370 Article 46 Implementing Act of the Code of Criminal Procedure *(Invoeringswet Wetboek van Strafrecht)* and *Kamerstukken II* 1997/98, 25 768, no. 5, p. 17.

371 Article 66 paragraph 1 DCC.

372 Article 67 DCC.

373 *Kamerstukken II* 1997/98, 25 768, no. 5, p. 17.

374 *Kamerstukken II* 1997/98, 25 768, no. 5, p. 9.

375 *Handelingen II* 1998/99, no. 98, p. 5699.

376 *Ibidem*, p. 5700.

377 *Ibidem*, p. 5699.

378 Nierop (2008), p. 45.

379 *Handelingen II* 1998/99, no. 98, p. 5700.

assumed if, on the basis of the examination in court, it can be established that the complainant at the time of the drawing up of the document meant to initiate the criminal prosecution.[380] The complaint does not have to emerge from the documentary evidence, it suffices that in court the existence of a complaint is found.[381] With respect to the rationale of the complaint requirement, the Alkmaar District Court even construed a complaint out of the fact that the victim had repetitively filed a report for interpersonal violence (not stalking!), that she wanted the suspect tried for those acts and that she had reacted positively in court when stalking was added to the charge.[382] The Amsterdam District Court deduced from the absence of any other purpose in the report that the victim must have aimed for criminal prosecution.[383] Furthermore, a complaint that initially only covered a certain period of time can be expanded if the victim files for a complementary follow-up report that covers the entire indicted period.[384] The court then assumes that the request to prosecute concerns the entire period of time.

The question of whether the complaint was brought forward in time, i.e. within the statutory limit of three months after learning of the offence, needs to be answered somewhat differently in cases of stalking that are by definition characterised by multiple incidents. As a consequence, the complaint can cover acts that took place more than three months before the complaint. According to Advocate General Fokkens, it is of relevance that the complaint was made within three months after the indicted period of time.[385] In other words, there has to be one act of stalking within the three months prior to the complaint.[386]

Despite this leniency, the Public Prosecution Service was sometimes barred nevertheless.[387] Especially in cases that involved multiple victims, for example, a stalker who simultaneously targeted a mother and her children, the police and the Public Prosecution Service sometimes forgot to make sure that each victim filed a complaint. The Supreme Court ruled that in cases with a plurality of persons entitled to lodge a complaint, *one* legally valid complaint does not suffice.[388] This would go against the rationale of Article 285b DCC paragraph 2, which provided that the personal interest of the victim not to be confronted with any negative consequences of criminal proceedings prevails over the general interest of criminal prosecution. This rationale would be undermined if one victim – other than having been authorised to (also) act on behalf of (other) victims – could open up prosecution for offences that were perpetrated against fellow

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380 HR 2 novemb er 2004, *LJN* AQ4289.

381 HR 13 september 2005, *LJN* AT7555. For example, Rb Zutphen 20 december 2006, *LJN* AZ4615; Hof 's-Hertogenbosch 6 augustus 2003, *LJN* AI1512; and Rb Roermond 28 mei 2002, *LJN* AE3500.

382 Rb Alkmaar 19 december 2006, *LJN* AZ5031.

383 Rb Amsterdam 11 augustus 2007, *LJN* BB2340.

384 Rb Maastricht 27 maart 2002, *LJN* AE0796, and Rb Utrecht 7 juli 2004, *LJN* AP8635.

385 HR 2 november 2004, *LJN* AQ4289.

386 The complaint was considered to be made in time in: Rb Utrecht 7 juli 2004, *LJN* AP8635; Rb Zutphen 19 juni 2003, *LJN* AH8569; and Rb Maastricht 27 maart 2002, *LJN* AE0796. Only in Rb Leeuwarden 28 november 2006, *LJN* AZ4877 the Court decided that the complaint was filed too late.

387 For example, in Hof Arnhem 19 februari 2009, *LJN* BH3441; Hof 's-Gravenhage 16 mei 2003, *LJN* AF8849; Rb 's-Gravenhage 30 maart 2007, *LJN* BA2086 (The complaint cannot be based on the fact that the victim wishes to join the criminal proceedings as an injured party, especially not when the report involves more than one offence); and Rb Dordrecht 20 december 2006, *LJN* AZ4894 (The single – standard – phrase that the victim wishes to be informed of the proceedings and the settlement of the criminal case cannot be considered a request to prosecute).

388 HR 2 november 2004, *LJN* AQ4289.

victims. The Public Prosecution Service is then barred as far as the victims who have not lodged a complaint are concerned.[389]

4.3.9. Sentencing

Once the defendant is found guilty of stalking, he can be sentenced to a maximum term of imprisonment of three years or a fine of the fourth category. As of the first of January 2008 this equals a maximum of € 18 500.[390]

Malsch et al. analysed data of the Public Prosecution Service from July 2000 to June 2005.[391] In that period, a total of 1947 cases of stalking had come before the Dutch courts.[392] They found that the penalty referred by the courts in cases of stalking (n = 709) was the suspended sentence combined with community service (34%). The average duration of this combination was 60 days of suspended imprisonment with 104 hours of community service. In 22% of the cases, the courts imposed a partly suspended prison sentence (63 days on average), in 14% a prison sentence, in 6% community service, in 5% partly suspended community service and in 5% suspended community service. Over the years, the percentage in which the courts imposed a partly suspended prison sentence had declined, while the combination of a suspended prison sentence with unconditional community service had risen. In other words, the courts were more inclined to impose community service. The imposed sentences are clearly aimed at changing the behavioural pattern of the offender, which is good. With 93% of the alleged stalking cases judged 'legally and convincingly proven', the attrition rate in courts in cases of stalking does not differ much from the attrition rate in other criminal offences.

Next to a sanction, the judge can also impose a non-punitive order, not meant as a punishment but aimed 'at the promotion of safety and security of persons or property or at restoring a state of affairs'.[393] Examples of non-punitive orders are the confiscation of illegally obtained profits (Article 36e DCC), the obligation to pay compensation (Article 36f DCC) and placement in a psychiatric hospital (Article 37 DCC). An important measure that is allowed for in cases of stalking is the entrustment order *(terbeschikkingstelling* or *TBS)* (Article 37a DCC). It entails that the offender is subjected to compulsory treatment in a special secure private or state institution. An entrustment order is imposed if the defendant suffers from a mental defect

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389 For example, Rb Utrecht 28 augustus 2006, *LJN* AY8373; Hof 's-Hertogenbosch 6 augustus 2003, *LJN* AI1512; Hof Amsterdam 26 maart 2009, *LJN* BI1302; Rb Zutphen 8 mei 2009, *LJN* BI3308. Rb 's-Gravenhage (erroneously!) ruled that the complaint of a wife and children could be derived from the complaint of the husband even though he had not been duly authorised to act on behalf of his wife and children. The Court reasoned that, since there had clearly been an intrusion upon the private life of the entire family, the husband had had the intent to file a complaint on behalf of his family. The accused had no right to complain about the absence of authorisation, because this rule was not established in his interest (Rb 's-Gravenhage 1 augustus 2008, *LJN* BD9179).

390 Article 23 paragraph 4 DCC.

391 M. Malsch, J.W. de Keijser & A. Rodjan, 'Het succes van de Nederlandse Belagingswet: Groei aantal zaken en opgelegde sancties', *Delikt & Delinkwent* (36) 2006-8, pp. 855-869.

392 In these cases the indictment contained the offence of stalking. Often the indictment contained other offences, such as threat, theft and assault, as well. For the analysis of the penalty imposed, the authors selected only those cases that had stalking as a single offence or those cases in which the penalty only concerned the stalking part of the indictment.

393 P.J.P. Tak, *The Dutch criminal justice system*, Nijmegen: Wolf Legal Publishers 2008, p. 118.

or disorder, but is still deemed responsible for his behaviour. The order is imposed to protect the safety of other people, the general public or property and it can usually only be issued for crimes carrying a prison sentence of at least four years. The order lasts for two years, but it can be extended with another two years on the application of the Public Prosecution Service. There are no data on the imposition of the entrustment order in cases of stalking in the Netherlands.

4.4. Conclusion

The statutory definition of stalking contains multiple elements with a broad meaning that allow for more than one interpretation, and Parliamentary history has not provided clarification on all points. Some of the elements, furthermore, are so closely linked to one another that they to a certain extent render one other redundant. Duker even claims that 'stalking' basically means nothing more than the systematic intrusion on someone's privacy.[394] If we look at the way the elements have been interpreted in practice and the amount of difficulty they have caused, he may have a point. Elements such as 'unlawfully', 'intentionally' and 'with the aim of forcing a person to do something, to refrain from doing something, to tolerate something or to instill fear in a person' are (partly) covered by other elements and they are easily met. Even heavily debated elements such as 'a person's privacy' or 'systematically' turn out to be less problematic than anticipated. The Supreme Court has confirmed that stalking does not necessarily have to take place within the confines of the victim's home or workplace, that the breach of privacy does not have to be substantial and it upheld a judgment in which two (grand)parents were convicted for not having *avoided* contact. Although there is still much uncertainty on the 'lower limit' of the necessary 'intrusiveness, duration and frequency', the impression one derives from case law is not that of rigidity. Even cases that would probably not be automatically considered stalking were still classified as such. The case law paints a picture of a legal practice that leaves ample room for the judges and the public prosecutors to prosecute and punish stalkers.[395]

The elements that could be considered problematic were 'to intrude upon' in its meaning of 'absence of permission' and the requirement that the victim lodges a complaint against the stalker. An argument that is regularly brought up by the defence counsel is either that there was permission on the part of the victim or that the stalker had no possibility of knowing about the absence of permission. Nevertheless, as long as the victim makes clear that the contact is unwanted an occasional failure to abstain from contact with the stalker will be overlooked. Furthermore, the courts have shown a remarkable tolerance in interpreting the formal requirement of paragraph 2 of Article 285b DCC. Only when multiple victims are concerned, a faulty or absent complaint will not readily be assumed correct or present, respectively.

It stands to reason to consider the 'exclusive focus on the victim' an implicit element or a factor that should be taken into account when assessing the intrusiveness of the behaviour. This limits the scope of Article 285b DCC somewhat, but apart from an occasional beggar or neighbour whose only mischief lies in turning up his stereo full blast this 'element' will not be much of a problem in practice.

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394 Duker (2007).

395 Also Duker (2007), p. 153.

In general the courts appear relatively flexible in interpreting Article 285b DCC. Stalking is easily accepted, which also appears from the fact that, in 93% of the cases, the indicted stalking was declared proven. Whether this can be (solely) attributed to the leniency of the courts, or whether the police and the Public Prosecution Service apply a strict selection criterion beforehand by filtering out all the cases in which there might be a risk of acquittal could not be established.

CHAPTER 5

ANALYSIS OF THE VICTIM SUPPORT QUESTIONNAIRE

5.1. Introduction

The primary reason for the Dutch legislator to introduce Article 285b into the Dutch Criminal Code was to provide victims of stalking with an effective tool in the fight against their stalker. In many cases, the traditional instruments had proven insufficient to stop the stalking. Mediation, civil restraining orders, committal to a psychiatric hospital, or criminal prosecution on the basis of other crimes were not appropriate tools to adequately intervene and to protect. Consequently, police officers and victims had expressed more and more pressingly the need for more effective intervention. In the mid-1990s, the growing awareness of the need for early intervention in stalking cases to prevent further escalation motivated the political party *D'66* to draft an anti-stalking bill. Its initiators thought that criminalisation could assist in ending stalking and that it could furthermore have a preventive effect.[396] Criminalisation would stimulate the police to investigate better and the victims would benefit from the fact that they no longer had to face the stalker alone, but instead would feel supported by the government.[397]

At the end of the general part, the writers announced an evaluation of the effects and functioning of the proposed bill after several years to see how its enforcement would work in practice.[398] The Council of State even advised the legislator to conduct proper comparative effectiveness research on the subject first, *before* creating a new law.[399] However, the bill was adopted and the proposed evaluation of the effectiveness has still not been performed.[400].

In this chapter, an attempt will be made to address this deficiency. The results of a quantitative victimisation questionnaire will be analysed to assess the effectiveness and the advantages and

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396 *Kamerstukken II* 1997/98, 25 768, no. 3, p. 3.

397 *Kamerstukken II* 1997/98, 25 768, no. 3, p. 12.

398 *Ibid*.

399 *Kamerstukken II* 1998/99, 25 768, no. A, pp. 1-2. The call for an effectiveness evaluation does not only find support with the Council of State. Many authors and experts have made similar suggestions, for example: M. Malsch, *De Wet Belaging. Totstandkoming en toepassing*, Nijmegen: Ars Aequi Libri 2004, p. 73; C. Pelikan, 'Psychoterror. Ein internationales Phänomen und seine Gesetzliche Regelung' in: *Du entkommst mir nicht... Psychoterror. Formen, Auswirkungen und gesetzliche Möglichkeiten* (Konferenz Bericht), Wien: MA 57 2003, pp. 25-33.

400 A study by Malsch, de Keijser & Rodjan into all the stalking cases that had been dealt with by the Dutch criminal justice system cannot be considered an effectiveness study (M. Malsch, J.W. de Keijser & A. Rodjan, 'Het succes van de Nederlandse Belagingswet: groei aantal zaken en opgelegde sancties', *Delikt en Delinkwent* (61) 2006-8, pp. 855-869). However, in reaction to questions from Parliament on a critical newspaper article that proclaimed the ineffectiveness of police intervention in cases of stalking, the government inaccurately referred to this study to prove that criminalisation was in fact effective in improving the situation for the victims (*Aanhangsel Handelingen II* 2007/08, no. 898).

disadvantages of criminal justice intervention in cases of stalking. The criminal justice system in a broad sense will be looked at, which means the consequences of a report or a notification *(mutatie)* regardless of whether this has led to criminal prosecution *stricto sensu*. Answers will be formulated to questions like: Does the intended protection and prevention in fact materialise during or after the victim has come into contact with the criminal justice system and does it put an end to the stalking? What features of a case, e.g., the type of stalker involved, influence the effectiveness of the intervention? The satisfaction of victims with the specific method and what they think of as positive or negative side effects will also be assessed. Furthermore, it will be investigated whether these side effects perhaps outweigh the advantage of a reduction in the stalking behaviour. First, however, an overview will be given of previous research on the effectiveness of the criminal justice system in relation to stalking.

5.2. Research on the effectiveness, the advantages and the disadvantages of the criminal justice system[401]

5.2.1. Research on the effectiveness of the criminal justice system

To date little research has been conducted on the needs of victims of stalking, let alone the prioritising of the different needs, but in stalking cases it may safely be assumed that the need for safety is at the top of victims' lists.[402] The women in Römkens and Mastenbroek's evaluation of the pilot of the AWARE alarm system were principally interested in protection against their stalker; the arrest and prosecution of the perpetrator only came second.[403] Linked to protection is the need to stop the stalking: victims want to be left alone.[404]

The effectiveness of legal interventions to deter stalkers, however, is by no means guaranteed. On the contrary, victims generally attributed the cessation of the stalking to changing circumstances, such as the perpetrator's involvement in a new relationship or the break-up of the victim's new relationship which had sparked the stalker's jealousy, rather than judicial interference.[405] In this regard, it is telling that a large majority of the Dutch stalkers appears to have been in contact with the police prior to the stalking charges. Out of 588 stalking cases that were registered in the judicial database, 78% of the male and 56% of the female stalkers already had a police record.[406] It appears that past experiences with the police had not made such a lasting impression as to prevent these people from getting involved in yet

401 This section is largely based on S. van der Aa & A. Groenen, 'Identifying the needs of stalking victims and the responsiveness of the criminal justice system: A qualitative study in Belgium and the Netherlands', *Victims and Offenders,* in press.

402 More information on stalking victims' needs will be given in Chapter 6.

403 R. Römkens & S. Mastenbroek, *Dan hoor je de vissen ademen. Over belaging en bedreiging van vrouwen door hun ex-partner en de beveiliging door het AWARE-systeem*, Utrecht: Universiteit Utrecht 1999.

404 P. Tjaden & N. Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey*, Washington D.C.: Department of Justice, National Institute of Justice 1998.

405 S. Morris, S. Anderson & L. Murray, *Stalking and harassment in Scotland*, Edinburgh: Scottish Executive Social Research 2002.

406 On average, the men had committed ten crimes, whereas the women had an average of four crimes (N.J. Baas, *Stalking*, Den Haag: Ministerie van Justitie, WODC 2003, p. 3).

another crime.

If the victims did attribute the improvement of their situation to the judicial system, these effects were generally provoked in an early stage of the procedure. Only 1% of American stalking victims replied that a conviction had ended the stalking, whereas 15% attributed this effect to a conversation of the police with the stalker and 9% to the arrest of the offender.[407] In other words, stalking victims were more likely to report an end to the stalking when the police used informal rather than formal means of intervention. Threatening to call the police or to file a report resulted in the cessation of stalking according to 19% of the women and 15% of the men in a study in the United Kingdom.[408] In a survey of 105 Dutch celebrities, the harassed respondents mentioned 'calling the police' as the response that was the most effective.[409]

At other times, going to the police does have an effect on the stalking, only not the effect that the victims had bargained for. An alarming finding is that the respondents in Sheridan's study of 29 victims sometimes found that the stalking had escalated as a result of the legal intervention.[410]

Law practitioners, on the other hand, are more optimistic about the effectiveness of criminal anti-stalking legislation. Almost three-quarters of the 245 surveyed police officers claimed that – to the best of their knowledge – the stalking had ceased in their most recent case and that this cessation could mainly be attributed to formal judicial processes (40%) or cautioning the offender (16.9%). The magistrates believed the stalking legislation to be most effective in protecting the victim and in preventing stalking behaviour.[411]

All in all, the results are inconclusive, but even the most optimistic studies mention a significant number of cases that were not solved despite police or judicial involvement. A quantitative victimisation survey amongst Dutch stalking victims who were registered in the computer system of Victim Support Netherlands may help us gain some understanding of the way the criminal justice system works here.

5.2.2. Research on the advantages and disadvantages of the criminal justice system

Next to the questionable effectiveness of the criminal justice system, more disadvantages of the criminal justice system have been identified in the literature. This topic will be elaborated on in Chapter 6, so this section will be devoted to the remark that there are four other issues that seem pivotal to victims of stalking: they fear retaliation, they complain about inactiveness on the part of the police, they fear a confrontation with the offender, and they complain about the way they are treated by the police. Other disadvantages or complaints that appeared in

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407 Tjaden & Thoennes (1998). Perhaps this difference can mainly be attributed to the fact that only a small percentage of the cases had actually progressed to the court phase.

408 S. Walby & J. Allen, *Domestic violence, sexual assault and stalking: Findings from the British Crime Survey*, London: Home Office 2004.

409 M. Malsch, M. Visscher & E. Blaauw, *Stalking van bekende personen*, Den Haag: Boom Juridische Uitgevers 2002.

410 L. Sheridan, 'The course and nature of stalking: An in-depth victim survey', *Journal of Threat Assessment* (1) 2001-3, pp. 61-79.

411 I. Dussuyer, 'Is stalking legislation effective in protecting victims?', paper presented at the *Stalking: Criminal justice responses* conference, Sydney, Australia 2000.

literature were, for example, the difficult evidence collection, the slow pace with which the criminal justice system proceeds, and the lack of information.

An advantage of the criminal justice system over any other measure available is that the police have the option of arrest. Admittedly, the entire criminal procedure from first report to conviction can take up a substantial amount of time, but thanks to preventive custody, the police are able to intervene very rapidly in a stalking situation, even quicker than a civil court in interlocutory proceedings. Some authors consider this to be the main weapon that the criminal justice system has to offer in the fight against stalking. Not the prosecution or the trial, nor the conviction or the penalty will primarily deter stalkers, but an immediate response to unwanted behaviour and the prompt detention in preventive custody. Criminal law should be used as a sort of 'interventionist law'.[412]

Victims seem to agree with this view. Sheridan found that, according to victims, arrest was the best police response to stalking, although no clear pattern was found between an arrest and the deterrence of the stalker.[413] Furthermore, when stalkers were arrested, American respondents were significantly more likely to be satisfied with the way the police had handled their case than respondents whose stalkers were not arrested.[414]

The other benefits closely mirror some of the disadvantages mentioned above. Many police officers did take an active interest in stalking cases, they did take victims seriously and they did treat them properly. In the UK, victims felt that, overall, the police were sympathetic towards the needs of stalking victims.[415] Victims felt supported and heard and they were relieved that they did not have to face the stalker alone.

5.3. Design of the Victim Support questionnaire

5.3.1. Aim study

The aim of this study was twofold:

1. The first aim was to provide descriptive statistics on the responsiveness, the perceived effectiveness, and the advantages and disadvantages of involving the Dutch criminal justice system in cases of stalking. Many of the proponents of criminalisation of stalking used arguments that either lacked an empirical basis or that were founded on qualitative research only. Quantitative research that studied victims of stalking in combination with the criminal justice system stems from foreign, mostly Anglo-Saxon countries and these findings cannot automatically be transposed to the Dutch system. Given the different legal systems, for example, an adversarial versus an inquisitorial system, or such other possible dissimilarities as a different police attitude towards stalking, the results of a Dutch questionnaire could easily diverge from American or British surveys. Which of the disadvantages that were iden-

412 M.S. Groenhuijsen, 'Strafrecht als interventierecht', *Delikt en Delinkwent* (28) 1998-6, pp. 521-526; Malsch (2004).

413 L. Sheridan, *Key findings from <www.stalkingsurvey.com> September 2005*, Leicester: University of Leicester 2005, <www.le.ac.uk>.

414 Tjaden & Thoennes (1998).

415 Sheridan (2005).

tified in foreign studies would be problematic to Dutch stalking victims as well and which would appear less troublesome? In the perception of the victims, did the legal interference have a positive or a negative impact on the stalking or on their quality of life? With the results of this survey, possible bottlenecks can be detected that, in turn, can be scrutinised on their legal tenability in the following chapters.

2. The second aim was to look for significant relations between different variables. Based on the Explanatory Memorandum, stalking victims may expect timely and serious intervention if their case so requires. This study assessed whether there really is a relationship between the seriousness of the stalking and the subsequent police reaction. Other important questions were whether victims whose stalkers have been arrested are more satisfied than others, whether an arrest works as a deterrent for the stalker, and whether male and female victims receive the same treatment by the police. These and other connexions were explored.

5.3.2. Method

In October 2007, a postal survey was distributed to 1,500 men and women of at least 15 years old selected from the files of Victim Support Netherlands *(Slachtofferhulp Nederland)*. Its intake of new clients is conducted with the help of volunteers who talk to the victim and who fill out a template form on their victimisation. This form contains a section where the volunteer can indicate what sort of crime the client has fallen victim to, *belaging* being one of the options. However, a selection on the basis of this word proved problematic. Many volunteers had interpreted the word *belaging* as a mild and non-punitive form of harassment – such as having a snowball thrown at you by some teenagers. As a consequence, the results of this first search were considerably inflated and the sample that was generated in this manner included many irrelevant cases. A second selection was therefore deemed necessary. This time the selection was based on whether or not the volunteer had explicitly classified the case as one of 'stalking' in the 'other' section.[416] Another criterion for inclusion in the study was that the client had come into contact with Victim Support *after* July 2000 when stalking was criminalised. Apart from those eligibility criteria, the respondents were obtained at random.

The respondents received two introductory letters: one from Victim Support Netherlands indicating that their organisation supported the research, the other from the research institute with an explanation of the aim of the study. Both letters emphasised that the necessary precautions for the protection of the privacy had been taken and that the responses would be treated confidentially. Participation was voluntary and two i-pods were put up for raffle among those respondents who completed the questionnaire. The questionnaire could be returned by mail in a stamped return envelope, but there was also an online version of the survey. For this purpose, the respondents were given a username and a password. The telephone number and e-mail address of the author were included in case the respondents were in need of more

416 In the open-ended 'other' section, the volunteers were given some room to describe the cases that did not seem to meet the other descriptions. Only when the case was described with the more commonly used term *stalking*, it was included in the study. The term *stalking* has a more serious connotation which more closely resembles the definition given in the first Chapter.

information.

Of the 1,500 surveys, 27.7% (415) could be accounted for. This included completed surveys, known refusals or surveys not received. Fifty-eight questionnaires were returned to sender, because the addressee had moved or because the respondent refused to fill out the questionnaire. After adjusting for the 58 surveys that were not received, the valid response rate was 23.8%. This is not uncommon for a postal questionnaire, especially given the fact that, due to the nature of the problem, it was decided to refrain from sending a reminder to people who had not responded. An analysis did not generate any significant differences between the age of the subjects who had not filled out the questionnaire and those who had. Apart from that variable, there was no information on possible selective answering patterns. After careful examination of the responses, one case was excluded due to the incoherence of the answers, but there was no other check for potentially false claimants. The total sample included 356 victims of stalking.

5.3.3. Sample characteristics

As described in Table 1, respondents' age varied widely, ranging from 15 to 82 years old and a mean of 41 years (SD=13.39). The distribution of sex was as follows: 298 (83.7%) of the sample was female; 58 (16.3%) of the sample was male. Furthermore, 68.7% of the sample had received an education until at least the age of 18 and over a quarter of the respondents (26.9%) had even received a high technical or vocational education or a university degree. Almost two thirds (60.7%) of the respondents was employed at the time of the survey. These numbers indicate that the sample consisted of a socio-economically varied group. Finally, 83 (23.3%) respondents shared parenthood of one or more children with their stalker.

Table 1: Victim characteristics

		Male (%)	Female(%)	Total(%)
Gender	Male	58 (16.3)		
	Female		298(83.7)	
Age	Mean	48	40	41
Education1	Lower vocational technical education	10	40	50 (14.0)
	Lower general secondary education	2	50	52 (14.6)
	Senior secondary vocational education	15	84	99 (27.8)
	Higher general secondary education and pre-university education	10	40	50 (14.0)
	Higher professional education	12	64	76 (21.3)
	University	7	13	20 (5.6)
	Missing			9 (2.5)
Occupation	Employed	41	175	216 (60.7)
	Student	2	30	32 (9.0)
	Retired	9	10	19 (5.3)
	Housekeeping or parenting	1	48	49 (13.8)
	Unemployed	1	15	16 (4.5)
	Protracted illness or disability	5	41	46 (12.9)
	Missing			3 (0.8)
Children	Yes, but not with stalker	28	105	133 (37.4)
	Yes, with stalker	8	75	83 (23.3)
	No	22	116	138 (38.8)
	Missing			2 (0.6)

5.3.4. Materials[417]

After the socio-demographic characteristics of the victim, the survey continued with direct questions about the victim's stalking experiences. Respondents were asked about the gender, education, substance abuse, psychological disorders, and criminal history of their stalker. Furthermore, the prior relationship between the victim and the perpetrator, possible prior interpersonal violence, the duration of the stalking, and the perceived motive of the stalker were inquired after. Victims' coping responses, the stalking tactics they had suffered from, and the question whether they had ever initiated contact themselves also formed part of the first sections.

The 10-item screening instrument for post-traumatic stress disorder as developed by Brewin et al. was used to assess whether victims had suffered severe traumatisation due to

417 An English version of the Victim Support Questionnaire can be found in Appendix 3.

the stalking incidents.[418] Ideally, victims are screened at three to four weeks after the traumatic event. Given the design of the current study – for some victims the stalking had ended years ago – this recommendation could not be followed up. Also, because of the sometimes considerable time lapse between the last incident and completion of the questionnaire, it was deemed unreliable to ask respondents to remember whether they had experienced any of the reactions at least twice a week after the last incident. Instead, they were asked whether 'as a result of the aforementioned incidents' they had experienced the enumerated reactions 'to a considerable extent'.

In the section that dealt with the police, respondents were asked whether they had ever contacted the police for help, whether they had filed a report, how the police had responded to their request, and how far in the legal procedure their case had progressed. Since one of the goals of the study was to measure the *perceived* effectiveness of police intervention, this effectiveness first had to be defined in such a way that it could be measured. In this survey, an intervention was considered effective if, in the perception of the victim, it had helped to decrease the frequency of stalking activities, if it had forced the stalker to switch to less pervasive stalking methods, or if the victim's subjective well-being had improved because of the intervention. Whereas the first two questions could be posed relatively straightforwardly (e.g. 'did the contact with the police and the possible legal consequences help lessen the frequency of the stalking'), the well-being was measured with the help of a variation on the Well Being Index as developed by Keilitz, Hannaford & Efkeman.[419] Victims were asked whether they felt better about themselves, whether they felt safer, and whether they felt more in control of the stalking thanks to the contact with the police.

A prior literature review had revealed several possible advantages and disadvantages of contact of stalking victims with the police and the criminal justice system. Examples of advantages that were mentioned were that the police would be able to intervene quickly, that stalking victims would feel acknowledged, and that victims would be appreciative of having the option to let someone else deal with their case. Disadvantages were fear of retaliation and difficulties to prove the stalking. These possible advantages and disadvantages were grouped into two multiple choice questions and victims could indicate whether they had experienced the different topics as advantageous or disadvantageous. Finally, victims could indicate their overall satisfaction with the police on a 5-point Likert scale.

Five female victims participated in a pilot to test the questionnaire on comprehensiveness, reliability, and duration. These victims were selected through the database of a women's shelter in Tilburg and the database of a private security and investigation agency that specialised in stalking.[420] As part of the pilot, these five women had to fill out the questionnaire in the absence of the researcher. Afterwards, researcher and victim went over the questionnaire point by point to discuss possible difficulties, which appeared very few in number. The questionnaires were adapted accordingly.

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418 C.R. Brewin, S. Rose, B. Andrews, J. Green, P. Tata, C. McEvedy, S. Turner & E.B. Foa, 'Brief screening instrument for post-traumatic stress disorder', *British Journal of Psychiatry* (181) 2002, pp. 158-162.

419 S.L. Keilitz, P.L. Hannaford & H.S. Efkeman, *Civil protection orders: The benefits and limitations for victims of domestic violence*, Williamsburg: National Center for State Courts 1997.

420 For more information on this agency, see Chapter 9.

5.3.5. Analysis

The data analyses were conducted using SPSS (version 16.0). The chi-square statistic was used to test for statistically significant differences between groups, for example, between victims who had filed a report and those who had not (*p*-value .05). When the analysis included continuous variables (e.g., the number of times the victim had come into contact with the police), analysis of variance was employed to test for statistically significant differences between groups. Estimates based on fewer than five responses were deemed unreliable and, therefore, were not tested for statistically significant differences between groups and were not presented in the tables. Because estimates presented generally exclude missing data and because not all the respondents went through the same procedures, sample and subsample sizes (n) sometimes vary. To take into account the possible interrelations between the various characteristics, logistic regression analyses were conducted to assess the associations between, for example, the reporting of the crime and age, gender, and the seriousness of the stalking independently of each other. Odds ratios and 95% confidence intervals as well as the Wald F test were used to assess the significance of the associations between the various variables.

5.4. Results

5.4.1. talking characteristics

5.4.1.1. Perpetrator characteristics

In 26 (7.3%) cases, the identity of the stalker was unknown. Of the known perpetrators, an overwhelming part was male (273; 82.7%) but women still accounted for 17.3% (57) of the stalking. In 31.2% of these cases, the victims did not know what education the stalker had had, but over 40% of the stalkers had a lower educational background only. Although many stalkers showed no signs of addiction (35.8%), almost a quarter was believed to be addicted to alcohol (23.6%). When asked to indicate whether the stalker had ever been diagnosed by a psychologist or a psychiatrist as suffering from any mental disorder, one third (33.3%) of the victims answered in the affirmative. In almost half (48.2%) of the cases, it was unknown whether the stalker had ever suffered from a mental disorder. Over two third (68.2%) of the perpetrators had been in contact with the police at least once, but almost one quarter (23.9%) of the respondents had no idea about the criminal history of their pursuer.

Table 2. Perpetrator characteristics

Stalker characteristics of known stalkers (n=330)		Male (%)	Female(%)	Total (%)
Gender	Male	273 (82.7)		
	Female		57 (17.3)	
Education	Lower vocational technical education	87	7	94 (28.5)
	Lower general secondary education	32	9	41 (12.4)
	Senior secondary vocational education	31	7	38 (11.5)
	Higher general secondary education and pre-university education	8	3	11 (3.3)
	Higher professional education	22	4	26 (7.9)
	University	10	2	12 (3.6)
	Unknown	79	24	103 (31.2)
	Missing			5 (1.5)
Addiction	No addiction	92	26	118 (35.8)
	Soft drugs	42	4	46 (13.9)
	Hard drugs	32		32 (9.7)
	Alcohol	74	4	78 (23.6)
	Gambling	21		21 (6.4)
	Unknown	75	26	101 (30.6)
	Missing			3 (0.9)
Mental disorder	Yes	85	25	110 (33.3)
	No	54	5	59 (17.9)
	Unknown	132	27	159 (48.2)
	Missing			2 (0.6)
Times of contact with police	Never	15	8	23 (7.0)
	Once	33	3	36 (10.9)
	Several times	168	21	189 (57.3)
	Unknown	54	25	79 (23.9)
	Missing			3 (0.9)

5.4.1.2. Prior relationship

Of the victims who knew the identity of their stalker, half (50.6%; n=167) had been in an intimate relationship with him or her. Other types of reported relationships with the stalker included: harassment by casual acquaintances or estranged friends (27.0%; 89), individuals encountered in a work context (11.5%; 38), or family members (1.8%; 6). Some stalkers were complete strangers (7.9%; 26). In line with previous research, the current survey found evidence of a strong link between ex-partner stalking and other forms of violence in intimate relationships. Of the 167 victims who were stalked by a former intimate partner, an overwhelming 88.6% reported some form of violence during the relationship. Eighty-four percent had experienced psychological violence, 55% physical violence and 23% had suffered from sexual violence.

5.4.1.3. Duration of the harassment

At the time of the survey, the stalking had stopped completely in only half of the cases (49.7%; 177). The other respondents were either still stalked (36.5%; 130) or did not know whether the stalking was still ongoing (11.2%; 40).[421] In the cases where the stalking had ended and where the respondents had indicated the period when the stalking had started and when it had ended (n=169), the duration of the stalking ranged from 0 months to 250 months (mean months = 24.79; SD = 35.51). When respondents were still being stalked at the time of the survey or when they did not know whether the stalking was still ongoing (n=158), the duration of the stalking ranged from 0 to 214 months (mean months = 45.75; SD = 44.41). The entire sample (n=327) had been subjected to an average of 34.91 (SD= 41.35) months of harassment. The 5% trimmed mean, however, was 29.25 months.

5.4.1.4. Methods of harassment

On average, victims had been subjected to 6.4 (SD = 2.2) methods of harassment from a provided list of 10 behaviours prior to their contact with Victim Support. Nearly all respondents had been involuntarily contacted through various means of communication. Unwanted telephone calls, e-mails, or letters were reported by 90.6% (323) of the sample. Other common methods of harassment involved following the victim around (76.4%; 272), insulting the victim (73.1%; 260), engaging the victim in unwanted conversations (71.3%; 254), distributing harmful information on the victim (55.4%; 197), sending the victim unwanted items (53.3%; 190), subscribing the victim to journals and newspapers (12.6%; 45), vandalising property (49.4%; 176), making threats (74.4%; 265), and committing physical assault (38.5%; 137).[422] Analysis indicated that making telephone calls was the one method to occur in isolation, but this happened in only five cases. The other methods always were always used in combination with other behaviours.

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421 Missing = 9.

422 Of the total of 356 respondents, the following were missing: telephone calls: 12; following the victim: 35; insulting the victim: 21; engaging the victim in unwanted conversations: 31; distributing harmful information: 40; sending unwanted items: 30; subscribing the victim to journals: 34; vandalising property: 27; making threats: 18; and committing physical assault: 29.

5.4.1.5. Trauma Screening Questionnaire (TSQ)

According to Brewin et al. an 'excellent prediction of a PTSD diagnosis' can be provided if respondents report at least six of the symptoms listed on the Trauma Screening Questionnaire, regardless of the combination. 58.4 Percent (208) of the sample met this criterion, indicating that a substantial part of the sample had suffered severe mental harm and had run a great risk of developing a post-traumatic stress disorder.[423] In the current survey, the Cronbach alpha coefficient of the TSQ was .84.[424]

5.4.1.6. Victim responses to stalking

Only five (1.4%) respondents indicated that they had not taken any measures to counter the stalking.[425] However, on closer inspection it appeared that they in fact *had* taken other anti-stalking measures. 15.2 Percent (54) had tried only one means to stop the stalker; 26.7% (95) had tried two; 25.6% (91) had applied three means, and almost one third (31.2%; 111) had resorted to four or more anti-stalking measures. The majority of victims (94.4%; 336) had contacted the police to help manage the harassment. More than half had tried to ignore the stalker (58.1%; 207); 21.1% (75) had taken safety measures such as an alarm system; (46.9%; 167) had changed their telephone number or e-mail address; (18%; 64) had moved; (94.4; 336) had contacted the police; (20.5%; 73) had filed for a civil restraining order;[426] and (25%; 89) had tried other measures such as talking to the stalker, having others talk to the stalker, pointing out that the behaviour was inappropriate, et cetera.

5.4.1.7. Motive for stalking

Forty-four percent (158) of the victims thought that their stalker acted out of revenge. Forty-three percent (154) believed that their stalker had relational motives, either the wish to initiate a relationship or to restore one. In 15.4% (55) of the cases, the victim had no idea as to the reason behind the stalking. Other motives were money (11.2%; 40), for example, when the stalker was unwilling to pay alimony, such arguments over the children (12.4%; 44) as custody issues, or other reasons (23.9%; 85). In 250 (60.4%) cases, the respondents thought that only one single motive drove the stalker. In the other cases, two or more motives were reported.

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423 Forty-three (12.1%) responses were missing.

424 The Cronbach's alpha coefficient of a scale should be above .7.

425 Another five responses were missing.

426 This number is probably not valid. After careful scrutiny of the answers, it turned out that some Dutch respondents had mistaken the civil restraining order for the criminal restraining order.

5.4.1.8. Contact with the stalker at the victim's initiative

Contrary to the advice that is generally given in cases of stalking, almost half of the sample (43%; 153) had contacted the stalker at least once on their own initiative (n=351; 5 missing). Although there is no empirical evidence for the effectiveness of ignoring the stalker, this recommendation can be found in nearly all handbooks on how to counter stalkers.

5.4.2. Stalking victims and the police

5.4.2.1. Contacting the police

Only 7 (2%) respondents indicated that they had never asked the police to help them do something about the stalking (n=353, missing=3). The following (multiple choice) arguments were mentioned as reasons for not contacting the police: four respondents hoped the stalking would stop spontaneously; one was afraid the police would not take her seriously; one did not want to stigmatise her stalker; one was afraid that contacting the police would not help; three feared retaliation from the stalker in response to the police contact; and two had other reasons for not wanting to contact the police.[427] When victims did contact the police, they reported an average of 12.78 (n=264, SD=17.68) times that they had come into contact with the police in relation to the stalking, but this average was heavily influenced by outliers.[428] However, with a 5% trimmed mean of 9.97 times, the number of police contacts was still substantial.

5.4.2.2. Police reaction

Of the total of 340 respondents who answered the question of how the police reacted (6 missing), one fourth of the victims had the impression that the police had not taken any action in their case (25.1%; 87). 43.9 Percent (152) was referred to Victim Support. Over one fifth (21.7%; 75) had the feeling that they or their case was not taken seriously by the police. In 37.9% (131) of the cases, the police gave general advice. In 46% of the cases (159), the police gave the stalker a warning. In 11% (38), they removed the stalker from the neighbourhood. The police arrested the stalker in 24.9% (86) of the cases. Almost one third (31.8%; 110) of the respondents indicated that the police had taken their case to court.[429] 16 respondents (4.6%) were referred to a different organisation and 70 (20.2%) respondents reported an action by the police that was not listed in the questionnaire.[430] Often a combination of responses was tried by the police.

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427 In case 15, the stalker was unknown and the woman only had a suspicion that her ex-partner was involved; in case 253, the male victim did not contact the police to protect his children.

428 In addition, there were 69 missing values, where instead of writing down an exact figure, respondents had stated that they had contacted the police 'umpteen times' or 'too many times to keep track' or that 'they could not remember'.

429 Later on, however, 142 people indicated that their case had been brought before a court of law.

430 Example of these are: 'they took down notifications', 'the police placed a message in the computer so that everyone knew to take immediate action when a request for help came from our address', 'they helped gather evidence', 'only after mediation by the Ombudsman and AWARE did I receive some cooperation' and 'it depended on the police officer, not everything was seen as threatening'.

5.4.2.3. Filing a report

Seventeen percent (59) of the sample (n=340; missing=6) indicated that, despite contact with the police, they had not officially filed a report with the police, whereas 81.2% (281) had. On being asked for the reasons for not filing a report, fear of escalation (20.3%; 12), fear of revenge (32.2%; 19), lack of evidence (37.3%; 22), and advice by the police (28.8%; 17) were mentioned most often. Other considerations for not reporting were: financial dependence (3.4%; 2), fear of stigmatising the stalker (5.1%; 3), cessation of the stalking (8.5%; 5), and other reasons (23.7%; 14). Examples of other reasons were 'the police required a big file'; 'I never heard from the police again'; 'the police refused to take down a report'; 'the police thought I had too little evidence, it wasn't aggressive enough'; and 'they had better things to do. I had called so many times. The police said: 'Focus on something else''.

5.4.2.4. Not going to court

Of the respondents who had filed a report, 151 (52.6%) indicated that their case had not been brought before a court of law. The reason mentioned most often was that there was insufficient evidence to proceed (41.1%; 62) followed by 'I was told that nothing could be done about it' (23.8%; 36). In 22 cases (14.6%), the police had tried to stop the stalking in a different manner and in 16 cases (10.6%) the stalking had already stopped. Only 4 (2.6%) victims withdrew their complaint. 16.6 Percent (25) of the respondents did not know why their case had not gone to trial, and in 30.5% (46) of the cases, there were other reasons for not proceeding to court, such as 'the public prosecutor did not prioritise it' or 'the police had not done their work properly'.

5.4.2.5. Going to court

If the case did go to court (n=142; 49.5%), the outcomes were mixed.[431] A remarkable finding was that only 12 (8.5%) cases ended in the acquittal of the suspect. 18 cases were still pending, but in all the other cases, the suspect was found guilty of the stalking charges. The following penalties were imposed: 5.6% (8) received a suspended fine, 25.4% (36) a non-suspended fine, 12.7% (18) a suspended community punishment order, 29.6% (42) a non-suspended community punishment order, 33.1% (47) a suspended prison sentence, 15.5% (22) a non-suspended prison sentence, 9.9% (14) was detained under a hospital order *(TBS)* and in 15.5% (22), the outcome of the case was unknown to the victim. 26.1 Percent (37) indicated that the verdict contained a sentence that was not listed in the multiple choice question. Usually, these penalties entailed criminal restraining orders or paying damages to the victim. Often a combination of penalties was imposed. Only 50.8% (66) of the cases contained merely one penalty, the others a combination of two (27.7%; 36) or more penalties.

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431 The 59 respondents who had not filed a report, the 151 whose case did not go to court and the 142 whose case did go to court add up to more than 100%. This is because some respondents had indicated that their case had and had not gone to court.

5.4.3. Perceived effectiveness, advantages and disadvantages of police contact

5.4.3.1. Perceived effect on the frequency and nature of stalking

The perceived effectiveness of police contact on the frequency and nature of the stalking was measured with the help of two questions: 1) 'Did the contact with the police and any subsequent criminal prosecution help diminish the frequency of the stalking?' and 2) 'Did the police contact and any subsequent criminal prosecution help to improve the nature of the stalking?' Both questions were clarified by providing an example or by rephrasing the question.

The frequency scale had 43 missing values (>5%). A X^2 test with dummy variables revealed that the respondents who had filed a report and those who had not differed in their answering pattern to this question.[432] As a result, the outcome of this question cannot easily be generalised to people who – despite their contact with the police and perhaps despite consecutive police action such as a warning or an arrest – did not file a report. It could be that the results would have been less favourable had these people filled in the frequency question as well.

Keeping these limitations in mind, the results appear very favourable for the police and a possible prosecutorial follow-up (Table 3): 111 (32.1%) respondents indicated that the stalking had stopped thanks to the police contact and, in 95 (27.5%) of the cases, the stalking became less frequent than before the contact. Almost one fourth (24.3%; 84) said that the stalking incidents occurred 'just as often'. In 3.7% of the cases (13), the stalking frequency increased with 6 (1.7%) people even indicating that the stalking took place 'much more often' due to police and/or judicial interference.

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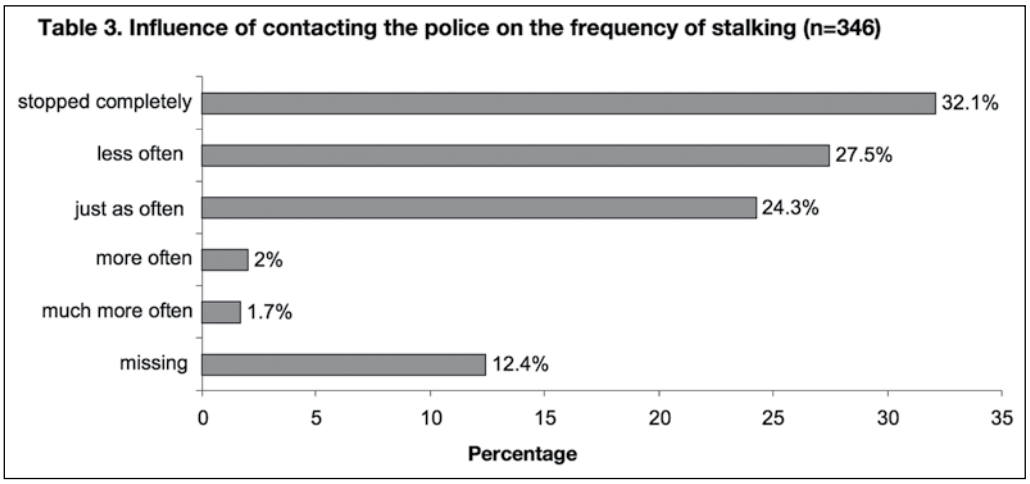
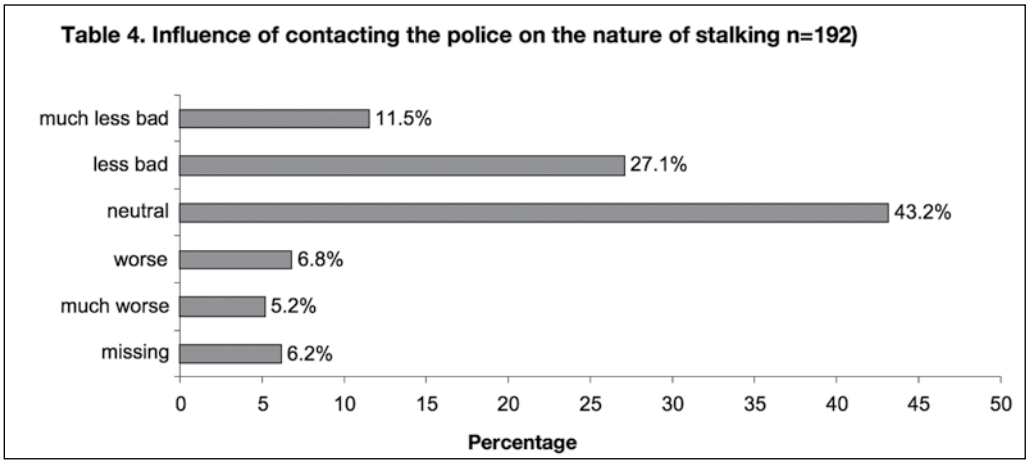
432 After assigning the missing values in question 5.9 the dummy value '0' and the other values the dummy variable '1', a X^2 test was performed to check for significant differences in filling out this question for respondents who had filed a report and those who had not. Zero cells (0%) had an expected count less than five. The continuity correction value is 12.075 with an associated significance level of .001. It may be concluded that the proportion of respondents who had filed a report significantly differed from the proportion of respondents who had not filed a report in their answering pattern to question 5.9. Some of the people who had not filed a report and who had not answered question 5.9 had written in the margin that the question was 'not applicable'.



Of the 192 remaining cases in which the stalking had not stopped completely, 12% (23) of the respondents indicated that the nature of the stalking had worsened after police interference and 5.2% (10) of the respondents said that it had become 'much worse'. In a large part of the cases (43.2%; 83), the nature of the stalking had remained unchanged, but in 38.6% (74), an improvement was found. In 22 (11.5%) of these cases, the nature of the stalking had even become 'much less bad' (Table 4).



5.4.3.2. Perceived effect on the subjective well-being

Subjective well-being means the improvement of the victims' general feelings of safety, feeling good about themselves, and feeling in control of the stalking as a result of the police contact (and judicial interference). As far as the feelings about the respondents themselves are concerned, 132 (38.2%) reported feeling better to much better about themselves as a result of the police contact and any subsequent criminal prosecution; for 110 (31.8%) respondents the police contact had not made any difference to their self-image; and 65 (18.8%) reported a deterioration of their feelings about themselves (Table 5). The feelings of safety had improved

in 41% (144) of the cases, but a large group (46.5%; 161) felt just as safe or unsafe after the judicial intervention as they had before. Twenty-six (7.5%) respondents felt less or much less safe (Table 6). The well-being scale was concluded with a question on the influence of police contact on feelings of control. 125 (36.1%) victims felt (much) more in control; 150 (43.4%) had not noticed any difference in their feelings of control; and 43 (12.4%) felt (much) less in control of the stalking (Table 7).

Table 5. Influence of contacting the police on feelings about themselves (n=346)

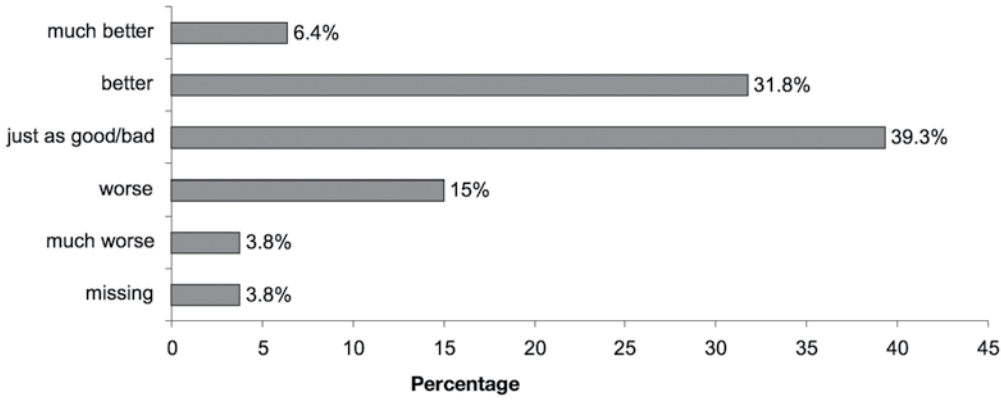
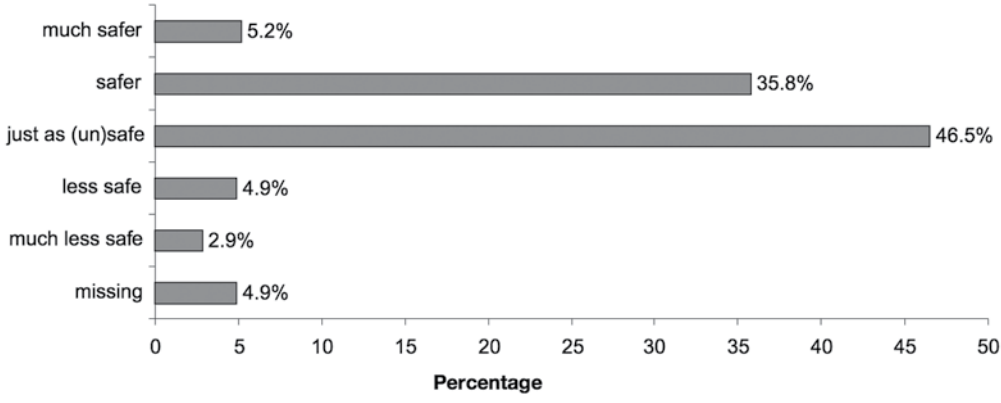
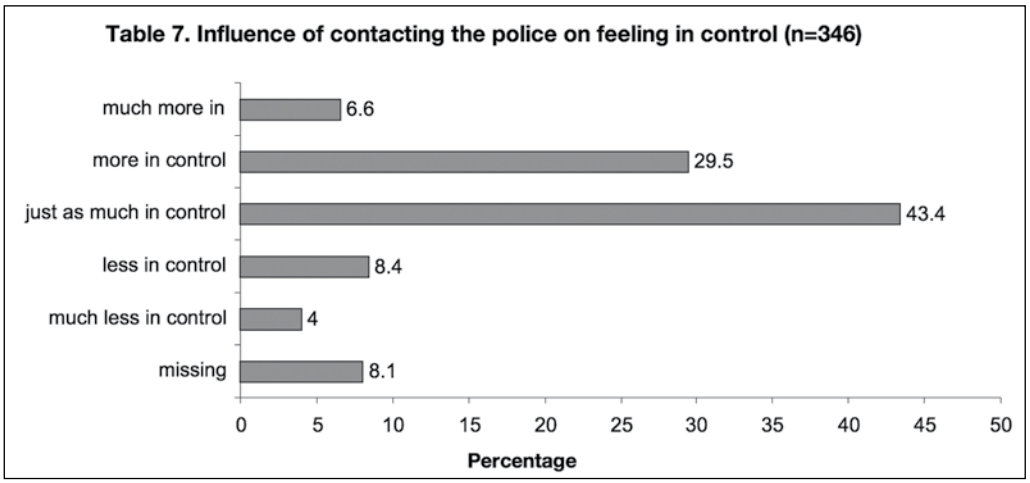


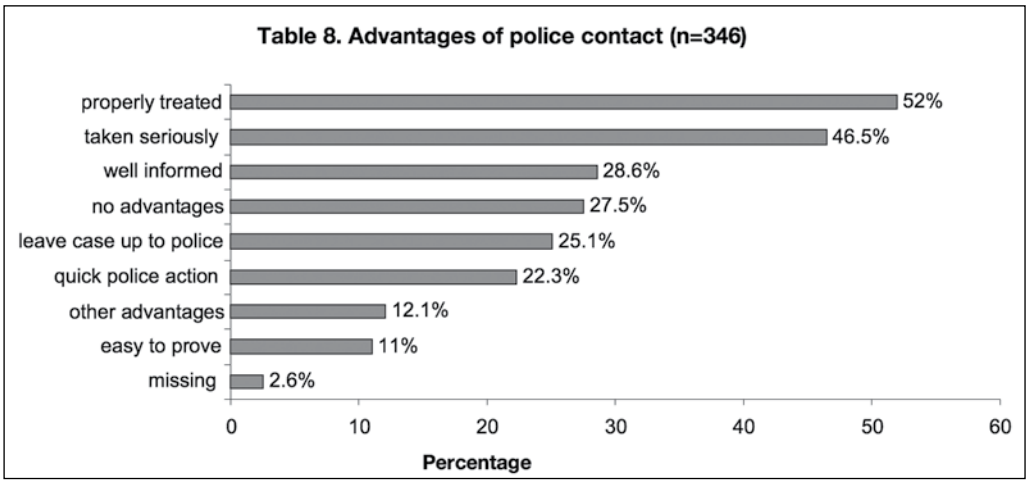
Table 6. Influence of contacting the police on feelings of safety (n=346)





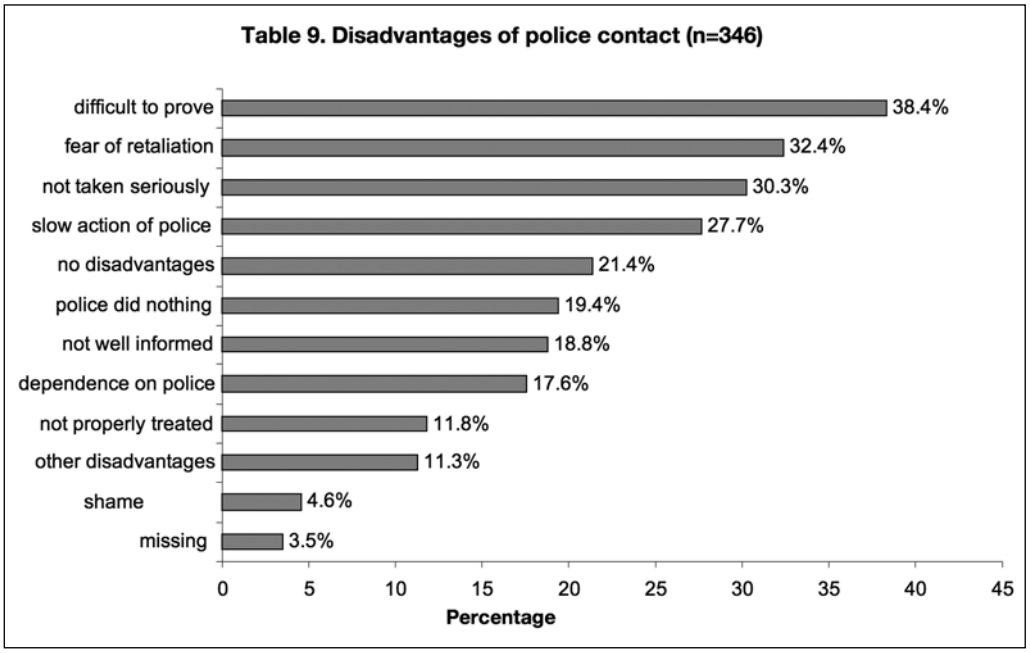
5.4.3.3. Advantages of police contact

In literature, the criminalisation of stalking was welcomed for several reasons. One of them was that victims would be pleased to part with their problem and would gladly leave it to the police instead. In answer to the question of what advantages the victims had experienced in their contact with the police, 87 (25.1%) respondents thought it was pleasant to be able to put the case into someone else's hands. Another reason was that, thanks to the criminalisation – and especially the possibility to take stalkers into preventive custody – the police would be able to respond quickly to the problem. However, only 22.3% (77) thought that the police took prompt action. Other advantages that were included as multiple choice options were related to procedural justice elements. The police are supposed to treat victims properly, to take them seriously, and to keep them well informed of the particulars of the case. An absolute majority of the sample (52%; 180) felt properly treated by the police; 28.6% (99) felt well-informed; and 46.5% (161) mentioned as an advantage that they had been taken seriously. Only 38 (11%) said that it had been easy to prove stalking, and 42 (12.1%) named other advantages. Ninety-five (27.5%) reported that – in their opinion – there had not been any advantages to the police contact.



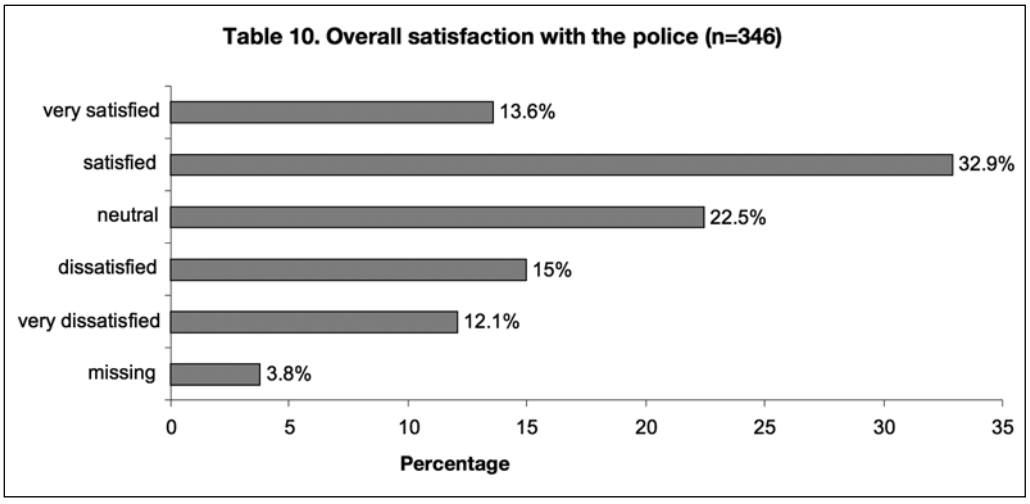
5.4.3.4. Disadvantages of police contact

21.4 Percent (74) could not discover any disadvantages about the police contact. Others, however, were less positive. 30.3 Percent (105) had the feeling that the police did not take them seriously; 38.4% (133) believed that proving stalking was difficult; 27.7% (96) said that it took a long time before the police came to action; and 19.4% (67) said that the police did not do anything at all. Other disadvantages were that the police had not treated them properly (11.8%; 41); that they were not sufficiently informed on their case (18.8%; 65) and that they did not like being dependent on the police (17.6%; 61). Finally, fear for retaliation played a considerable part in victims' assessment of resorting to the police. Almost one third (32.4%; 112) was afraid that the stalker would retaliate in response to the police interference. An argument that can sometimes be found in literature that victims are hesitant to contact the police because they do not want to stigmatise their stalker, was almost non-existent in the current sample. Only 4.6% (16) thought it a disadvantage that the stalker would be put in a bad light. Of course, this could be due to the fact that the majority of the sample had already contacted the police: feelings of pity towards the stalker had not been a deterrent for them. Thirty-nine (11.3%) victims reported other disadvantages.



5.4.3.5. Overall satisfaction with the police

In answer to the question of how satisfied victims were with the police contact, 32.9% (114) responded that they were satisfied. 13.6% (47) were even 'very satisfied' with the police. Seventy-eight (22.5%) victims were 'neutral' about the police, 27.1% (94) were not satisfied and of that group, 12.1% (42) were even 'very dissatisfied'.



5.4.4. Associations and correlations

5.4.4.1. Variables that are related to the reaction of the police

Bivariate cross-tabular analysis of the associations between background characteristics and the reaction of the police showed that the relationship between gender of both the stalker and the victim, and the health and educational level of the victim were significantly related to certain reactions of the police (Table 11). An important finding was that the proportion of women who reported that the police did not take them seriously is significantly different from the proportion of men who had the same complaint. Almost twenty-five percent (24.6%) of women and a little over nine percent (9.1%) of men did not feel they were taken seriously.

Another significant relationship was found between education and a criminal trial. The higher the education the victim had received, the higher the chances that the police took the case to court: the percentage of victims who claimed that the police had taken their case to court ranged from 19.1% in the lowest educational echelon to 57.9% of the victims with the highest education.

The gender of the perpetrator was significantly related to whether the police made an arrest or not. Male stalkers were more likely than female stalkers to be arrested (29.2% and 14.3%, respectively). They were also more likely to be removed from the neighbourhood (14.0% and 1.8%) and to be sent to court (37.1% and 19.6%). The victims who were stalked by a female stalker reported more often that the police did nothing than those who were harassed by a male perpetrator (37.5% and 22.7%). In contrast, the proportion of victims of a male stalker that thought the police did not take them seriously was significantly different from the proportion of victims of a female stalker (25% and 7.1%).

Another finding was that if the victim was stalked by the father or mother of his/her children, the police were more likely to remove the stalker out of the neighbourhood, than if the victim had a child with another person or had no child at all. Over one fourth (25.3%) of the victims who shared parenthood with their stalker reported that the police had removed the stalker, compared to 6.2% when the child was not the stalker's or 7.7% when the victim had no children at all.

Finally, victims who were ill for a protracted period of time seemed to be worse off than victims who had a job or an occupation. The police were less likely to make an arrest in their case (9.3% and 27.9%), and their case was less likely to be brought before a court (11.6% and 35.7%).

Even though the above results all differ on a significant level, this does not mean that the differences found are actually *relevant*. To be able to compare the actual strength of the relationships, Cramer's V is represented in Table 11 as well. This column shows that all the connexions are weak or very weak.[433]

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433 Cramer's V is interpreted as follows: from 0 to 0.20 is a very weak connexion; from 0.20 to 0.40 weak; from 0.40 to 0.60 medium; from 0.60 to 0.80 strong and from 0.80 onwards very strong (O.J. Bosker, *Snelrecht: De general en special preventieve effecten van sneller straffen* (diss.), Groningen 1997, p. 75)

Table 11. X^2, Cramer's V, and logistic regression on background characteristics and police reaction

Background characteristics by police reaction	X^2 (p)	Cramer's V
Gender victim by - being taken seriously	6.418 (.011)	.137
Education by - take to court	12.241 (.032)	.192
Gender stalker by		
- police did nothing	5.333 (.021)	.129
- being taken seriously	8.620 (.003)	.164
- remove from neighbourhood	6.603 (.010)	.144
- arrest	5.245 (.022)	.128
- take to court	6.284 (.012)	.140
Child with stalker by - remove from neighbourhood	20.609 (.000)	.247
Protracted illness by		
- arrest	6.820 (.009)	.142
- take to court	9.899 (.002)	.171

Another analysis that put some of the connexions found in perspective was the logistic regression in which all the variables that were significant on a certain outcome variable were inserted together with the seriousness of the stalking as an extra covariate. If the dependent variable was, for example, 'being taken seriously', then the independent variables that were inserted in the logistic regression analysis were: 'gender of the victim', 'gender of the stalker' and 'seriousness of the stalking'. In this way, the previously established link between gender of victim/stalker and being taken seriously by the police could be controlled for the seriousness of the stalking.

The 'seriousness of the stalking' variable was calculated by summing the items endorsed by each respondent (with 0 for 'never', 1 for 'less than monthly', 2 for 'every month', 3 for 'every week', 4 for 'once a day' and 5 for 'more than once a day'). The acts that Palarea & Langhinrichsen-Rohling (1998) had classified as 'severe acts' in their Unwanted Pursuit Behavior Inventory (following someone, releasing harmful information, damaging property, uttering threats and causing physical injury) were double-weighted.

The normative theory behind inserting seriousness is that, ideally, the police would only have their behaviour influenced by the seriousness of the stalking. If the stalking is serious, serious countermeasures are called for; if the stalking is only mild, the police are allowed to opt for less radical measures. None of the other variables (e.g., gender of the stalker, gender of the victim, education of the victim) should make a difference. Table 12 reflects the results of these various logistic regressions.

It turns out that, although many relationships disappeared when controlled for the seriousness of the stalking, some still prevailed. And not only did they meet the required level of significance, they also had some interesting odds ratios. If the victim was male, the odds of him not being taken seriously decreased with factor .216. People with the highest education had almost five times higher odds of their case being brought before a court of law compared

to the people with the lowest education. Male stalkers were over 2.5 times more likely to be brought to trial in comparison to female stalkers.

Table 12. Logistic regression with all the significant independent background characteristics on a certain criminal justice outcome variable and seriousness stalking as the covariates

Independent variables	}	dependent variable	B (S.E)	Odds ratio	95% CI	
					Lowest	Highest
- gender victim	}	being taken seriously	-1.533* (.763)	.216	.048	.963
- gender stalker			n.s.[1]	-	-	-
- seriousness stalking			n.s.	-	-	-
- education	}	take to court	1.586* (.662)[2]	4.884	1.334	17.878
- gender stalker			.966* (.452)	2.626	1.083	6.370
- protracted sickness			-1.469* (.563)	.230	.076	.694
- seriousness stalking			n.s.	-	-	-
- gender stalker	}	police did nothing	-1.071** (.376)	.343	.164	.715
- seriousness			.022* (.009)	1.022	1.003	1.041
- gender stalker	}	remove from neigh-	n.s.	-	-	-
- child with stalker		bourhood	n.s.	-	-	-
- seriousness			.033** (.012)	1.034	1.009	1.058
- gender stalker	}	arrest	n.s.	-	-	-
- protracted illness			-1.213* (.561)	.297	.099	.892
- seriousness			.022* (.009)	1.023	1.004	1.042

[1] The abbreviation 'n.s.' stands for 'not significant'.

[2] Only the group with the highest education had a significant outcome and is reported here.

* $p < .05$ (on the Wald test)

** $p < .01$ (on the Wald test)

5.4.4.2. Variables that were related to the effectiveness of the police contact

The second cluster of analyses was conducted to answer the question of whether there is a significant relation between the extent to which the case had progressed through the criminal justice system (from report, warning, removing stalker from neighbourhood, arrest, to trial) and the perceived effectiveness (frequency of the stalking, nature of the stalking, feelings about self, feelings of safety, feelings of control, and overall satisfaction). In Table 13 the significant relations

are set out. An inspection of the cross-tabulations revealed that literally all the outcomes were in favour of criminal justice intervention. For example, victims who had reported the stalking to the police generally felt better about themselves, victims whose stalkers had received a warning by the police felt safer, etcetera, etcetera. Certain outcomes need to be interpreted with care, since sometimes more than 20% of cells have expected frequencies of less than 5.

Table 13. Progress through criminal justice system and effectiveness

	X^2 (p)	Cramer's V	Cells < 5
Report by			
- feelings about self	13.375 (.010)	.202	2
Warning by			
- feelings of safety	9.669 (.046)	.172	2
- overall satisfaction	14.494 (.006)	.210	0
Remove stalker by			
- feelings of safety	11.749 (.019)	.190	3
- overall satisfaction	13.775 (.008)	.205	1
Arrest by			
- stalking frequency	14.948 (.005)	.223	3
- feelings about self	37.590 (.000)	.339	1
- feelings of safety	30.938 (.000)	.309	3
- feelings of control	25.321 (.000)	.284	1
- overall satisfaction	45.816 (.000)	.373	0
Trial by			
- stalking frequency	29.933 (.000)	.319	4
- nature of the stalking	11.133 (.025)	.252	1
- feelings about the self	44.169 (.000)	.369	0
- feelings of safety	43.465 (.000)	.368	1
- feelings of control	37.826 (.000)	.349	0
- overall satisfaction	39.139 (.000)	.347	0

5.5. Limitations

This study was limited in a number of important ways. First of all, the sampling from people who were registered at Victim Support may raise some questions. Victim Support has the reputation of attracting people who do not know how to cope with victimisation themselves and people with a lower education. If this were true, a generalisation of the findings to the total population of stalking victims would then become doubtful. In 1995, however, the services of

Victim Support were institutionalised by the Victim Support Act [*Wet Terwee*]. Thanks to this Act, victims of certain crimes are automatically referred to Victim Support when they go to the police. In this way, even the victims who are not in want of help from Victim Support end up in their computer system. As could be witnessed from the sample, many respondents had indeed refused the services that were offered to them by Victim Support and the majority of the sample could be classified as medium to highly educated.

A second limitation was that only a negligible number of respondents had not come into contact with the police. Prior to the distribution of the survey, Victim Support employees had estimated that nearly 25% of their stalking clientele would not have been in contact with the police. The underrepresentation of people who had not taken their case to the police meant the loss of a control group.

A third limitation lay in the fact that the (legal nature of) some questions turned out to be too difficult for certain victims. Despite an explanation of specific legal terms, despite an attempt to phrase the questions as simply as possible, and despite a pilot amongst five stalking victims which had not generated many difficulties, some victims had clearly misinterpreted legal terms such as 'civil restraining order' or they had not followed the routing instructions. Whenever such a problem was identified, action was taken – the entire section on civil restraining orders, for example, was left out of the analysis – but it is possible that some misinterpretations have skipped the attention, which may be of influence on the validity of the results.

Other limitations were that some people are more willing to participate in a survey on stalking victimisation than others, depending on the seriousness of the experience, their satisfaction with the police, and the way they had coped with the events. Systematic errors arise when a certain group of victims are more eager to participate or, on the contrary, are more reluctant to disclose their experiences.

Moreover, a self-defined group of victims can also contain a number of false victims. These persons claim to be victims of stalking while they have never been subjected to the behaviour. Apart from the one case that was removed due to the incoherency of of the answers there was no possibility to systematically control for false claims of victimisation. However, the impact of this should not be overestimated: false allegations of stalking victimisation are very rare.[434]

The fact that many people had moved could also be of influence on the possibility of generalising the findings. It could be argued that people who suffer from severe levels of stalking are more likely to change address than people who suffer from less intrusive behaviour. In addition, the valid response rate was only moderate for a postal questionnaire. Whether these factors actually influenced the generalisability of the findings on variables other than age could not be controlled for.

Finally, the findings may have been biased by loss of recall. Due to the reference period of over 20 years – when the stalking began for some victims – recall problems are more likely to have had an influence.

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434 M. Pathé, P.E. Mullen & R. Purcell, 'Stalking: False claims of victimisation', *British Journal of Psychiatry* (174) 1999, pp. 170-172.

5.6. Conclusion

Many difficulties of stalking victims with the criminal justice system that were mentioned in foreign literature could be identified in the current study as well. For seven victims, merely contacting the police was already too high a threshold, but for a more substantial group of victims, the filing of a report formed the most important barrier to justice. Both groups acted mainly out of fear of escalation or revenge. However, 22 respondents thought there was not enough evidence and 17 respondents indicated that the police had talked them out of reporting against their stalker. Especially the latter finding is disquieting. If the police advice is inspired by the interest of the victim – for example, when they genuinely believe that this case would benefit more from obtaining a civil restraining order – the recommendation not to report might be excused, but the remarks that respondents wrote down in addition to their answer seem to paint a different picture. Remarks such as 'the police thought (...) it wasn't aggressive enough' or 'they had better things to do' suggest that sometimes the motivation for discouraging victims to file a report can be attributed to considerations of priority and plain misunderstanding of what the crime of stalking entails. Stalking, for instance, does not need to be aggressive to be legally relevant.

When the victim did report, there was a high attrition rate. Over half of the cases did not proceed to court. The reasons mentioned most often were that there was insufficient evidence or respondents were told that 'nothing could be done about it'. Difficulty to prove the stalking was also mentioned by 38.4% of the victims as one of the most important disadvantages. Whether stalking is really as difficult to prove or whether their evidentiary standard is too demanding could not be assessed within the parameters of the Victim Support Questionnaire. It might very well be that the repetitiveness of the behaviour and the sometimes stealthy nature of the crime cause evidentiary difficulties, even if the police dedicate themselves to a case. After all, how do you prove who threw a brick through your window? Still a large part of the stalkers in the sample used various means of communication that generally leave behind a trail of evidence in the form of letters, e-mails, text messages, or phone calls.

An indication that perhaps the requirements used by the police and the Public Prosecution Service employ too strict requirements to verify the conduct is that only 8.5% of the cases that went to trial ended in the acquittal of the suspect. This finding closely corresponds to the percentage that Malsch, De Keijser & Rodjan found in their evaluation of all stalking cases that had been dealt with by the Dutch criminal justice system since the enactment of Article 285b DCC.[435] They found that in over 93% of the cases, the courts declared the stalking conclusively proven. This percentage does not differ much from conviction rates for other crimes.[436] However, these percentages strongly deviate from those found in foreign studies, where almost half of

435 Malsch, De Keijser & Rodjan (2006).

436 The number of convictions had declined slightly in the last ten years: from 95% to 92% (Y. Buruma, 'Een al te responsief strafrecht', *Delikt & Delinkwent* (9) 2008-2, pp. 105-120).

the cases ended in the acquittal of the suspect.[437]

Some authors have argued that the added value of the criminalisation of stalking would not so much lie in the possibility to prosecute stalkers and to have them imprisoned, but more in the possibility to intervene at an early stage by arresting them.[438] The need for early intervention was also one of the reasons for the legislator to criminalise the conduct. One fourth (24.9%) of the respondents in the Victim Support survey who had contacted the police reported that their stalker was arrested at some point.[439] The questionnaire did not explicitly inquire after the exact time lapse between the first contact with the police and the arrest. Nevertheless, with an average of over twelve times that the victims had come into contact with the police, the intervention may have been either too late or not very successful. Corroborating evidence for the tardiness of the police was the fact that 27.7% of the victims said that it took a long time before the police came into action compared to 22.3% who thought the police had acted swiftly.

As regards the perceived effectiveness of the police and the judicial system, the results were generally positive. In 59.6% of the cases, the stalking had become less frequent or it had stopped completely thanks to the police and/or judicial interference. Only 3.7% of the respondents reported an increase in the frequency of the stalking. The interventions also had a positive influence on the nature of the stalking. Despite the fact that the stalking had not stopped completely in 192 cases, 38.6% of this group said their situation had nevertheless improved, compared to 12% who thought that the stalker had switched to more disturbing behaviour. Although over one third of respondents reported a positive influence on their feelings of self-esteem, safety, and control, an important finding is that 18.8% felt worse about themselves, 7.5% felt less safe and 12.4% felt less in control as a result of the police contact. These findings are indicative of secondary victimisation caused by the criminal justice system. The victims were worse off after contact with the police or the judicial system than they were before.

Several of these negative feelings could be explained by the disadvantages that were encountered in contacting the police. A remarkable finding was that 30.3% of the victims who had come into contact with the police had the feeling that the police did not take them seriously. In some of these cases, however, the same respondents had simultaneously indicated that the police *had* taken them seriously. This paradoxical combination of answers may be explained by the fact that victims have come into contact with the police on numerous occasions. It is plausible that the police take on a reserved attitude in first instance, but move into action once the victim turns out to be persistent or if the incidents continue for a longer period of time. Victims may also have encountered different police officers with different attitudes towards stalking. Even if this is the case, the result is still worrying.

Other findings that deserve attention are: that victims feared retaliation by the perpetrator;

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437 In the US, only 54% of the stalkers who had criminal charges filed against them were convicted of a crime (Tjaden & Thoennes, 1998). In Canada, 50.3% of the stalking allegations were not proven (Dussuyer, 2001). Nevertheless, it is difficult to compare these numbers, given that the Anglo-Saxon countries described have a tradition of plea bargaining in which a large proportion of the suspects pleads guilty.

438 Groenhuijsen (1999); Malsch (2004).

439 Also in Tjaden & Thoennes's (1998) study, in about a quarter of the stalking cases that were reported to the police, the stalker was arrested and about 12% of all stalking cases resulted in criminal prosecution.

that they were sometimes not treated properly; that they did not feel well informed; and that they had the feeling that the police had not taken any action at all. It is suggested in the literature that the disinclination of law enforcement officers to intervene may possibly be caused by the high attrition rate due to the withdrawal of the complaint by the victim.[440] As in other cases of interpersonal violence, the police may believe that arresting the offender is a waste of time because victims are inclined to drop charges.[441] This sample, however, only contained four victims who had withdrawn their complaint.

On a more positive note, victims reported several advantages of the police contact as well. Being able to hand the case over to the authorities, timely intervention, and the provision of sufficient information were mentioned in this context. The main advantages were that the majority of the sample felt properly treated by the police and almost half thought it was an advantage to be taken seriously, to feel acknowledged.

The fact that proper treatment and being taken seriously or acknowledgment of the crime were mentioned so often, either as an advantage or as a disadvantage, indicates that people think these aspects are very important. It can make or break the way people think about the police and the judicial system.

Several significant relationships were found between background characteristics and the reaction of the police, even after controlling for the seriousness of the stalking. A significant relationship was found, for example, between the educational level of the victim and the case going to trial. People with a higher education encountered less difficulty in having their case brought before a court compared to people with a lower education. More attention needs to be paid to the mechanisms behind this finding. A possible explanation could be that people with a lower education do not understand what they have to do in order to have their case successfully procede through the criminal justice system. They might have difficulties preserving evidence, thereby complicating the work of the police.[442] If this is the case, the police should pay extra attention to informing these people and to coach them throughout the procedure.

The final relationship that needs to be discussed is the finding that male stalkers were more likely to be sent to court than female stalkers. If the reason behind this pattern is that stalking by a female stalker is perceived as being less serious, this assumption needs to be carefully reconsidered. Although a small correlation was found between the seriousness of stalking and gender of the offender ($r = -.191$, $n = 259$, $p = .002$), female stalkers also engaged in slander, threats or even physical violence. Police should be unbiased as to the gender of the stalker and should treat these cases similarly

It may be concluded that the majority of victims were fairly satisfied with the police and the criminal justice system and that the interventions were perceived to be relatively effective, both for the frequency and nature of the stalking and for a subjective well-being of the victim. However, there were also reasons for concern. For example, the high evidentiary requirements, the slow pace of the process, the negative police attitude and the fear of retaliation appeared

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440 Finch (1999).

441 W.E. Bradburn, 'Stalking statutes: An ineffective legislative remedy for rectifying perceived problems with today's injunction system', *Ohio Northern University Law Review* (19) 1992-1993, pp. 271-288.

442 They at least did not contact the stalker at their own initiative significantly more often than people with a higher education.

to be problematic for victims of stalking in this survey as well. Furthermore, the fact that victims sometimes reported an escalation of the stalking and the fact that the police seemed to treat victims differently according to their gender or level of education deserves further attention. Some of the problematic areas that were identified in this survey – fear of retaliation, procurement of evidence, and police attitude – will be explored more thoroughly in the next chapters.

CHAPTER 6

INTERVIEWS WITH DUTCH AND BELGIAN STALKING VICTIMS

6.1 Introduction[443]

While processing the results of the Victim Support Questionnaire, it turned out that many respondents felt that there was much more to tell about their stalking experience and their contact with the criminal justice system than the questionnaire had allowed for. They had written additional remarks in the margins of the questionnaire and some had even attached multiple sheets of paper with an elaborate description of their ordeals. This apparent willingness (and perhaps need) to disclose what had happened to them allowed the researcher to have the questionnaire followed up by several interviews. The quantitative questionnaire had only given an indication of the problems that stalking victims came across when confronted with the criminal justice system; interviews would enable a closer look at these problems, would perhaps supplement them by other problems and would generate a better understanding of the needs that stalking victims have when they enter the criminal justice system.

Research on the experiences of victims with the criminal justice system often uses procedural and distributive justice as a theoretical framework. The procedural justice theory basically departs from the assumption that the opinion of citizens on the legitimacy of the government, the acceptance of governmental decisions, and the extent to which governmental regulations are obeyed is more dependent on the manner in which these decisions and regulations came about than on their outcome.[444] The distributive justice theory argues the exact opposite. In this view, the outcome is the main determinant of citizens' satisfaction with a certain decision.[445] Both theories, however, take for granted that victims have certain expectations or needs – be they procedural or outcome-related – and that victim satisfaction strongly correlates with the extent to which these needs are met.

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443 This chapter is to a large extent based on S. van der Aa & A. Groenen, 'Identifying the needs of stalking victims and the responsiveness of the criminal justice system: A qualitative study in Belgium and the Netherlands', *Victims and Offenders*, in press.

444 T.R. Tyler, *Why people obey the law*, New Haven: Yale University 1990; T.R. Tyler & E.A. Lind, 'A relational model of authority in groups', in M.P. Zanna (ed.), *Advances in experimental social psychology Vol. 25*, San Diego: Academic Press 1992, pp. 115-191.

445 F.W. Winkel, A.C.M. Spapens, R.M. Letschert, M.S. Groenhuijsen & J.J.M. van Dijk, *Tevredenheid van slachtoffers met 'rechtspleging' en slachtofferhulp: Een victimologische en rechtspsychologische secundaire analyse*, Nijmegen: Wolf Legal Publishers 2006.

In a literature review of 33 empirical studies, Ten Boom & Kuijpers identified several victims' needs that were related to the police and other judicial authorities and clustered them in fourteen different categories.[446] The law enforcement related needs that were expressed 'relatively often' in the studies under investigation were the need for information, the need for safety and protection, and the need to be heard within criminal proceedings.[447] The needs that were included in Ten Boom and Kuijpers' table were mentioned by all victims, regardless of the crime they had suffered from, only the bereaved and victims of violence showed some additional needs. Victims of violence, for example, expressed the wish to repair the relationship or the wish not to prosecute the offender.

To date there is little research on the needs of stalking victims.[448] The only study that focused on stalking victims' needs in general is that of Brewster.[449] Of the 187 female stalking victims she interviewed, 38% identified psychological/emotional support as the greatest need, followed by a sense of security (23%) and support from the criminal justice system (10%). Specific studies on the needs of stalking victims in relation to the criminal justice system do not even exist. However, like victims of violence, victims of stalking may have different or additional needs. Additional needs may, for instance, derive from the complicating factor that stalking victims often come into contact with the police on several occasions over a long period of time.

Another point that has not been a topic of much research is how the criminal justice system responds to stalking victims' needs. Several publications paint a picture of a criminal justice practice defined by rather low reporting and high attrition rates.[450] Only 23% of all notifications of stalking with the police result in a report and of those reports just 1% of the cases ended in the conviction of the suspect.[451] On top of that, anecdotal evidence suggests that a part of the

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446 A. ten Boom & K.F. Kuijpers, *Behoeften van slachtoffers van delicten. Een systematische literatuurstudie naar behoeften zoals door slachtoffers zelf geuit*, Den Haag: WODC, Ministry of Justice 2008. These categories were: (initial) response, care and support by the police; acknowledgement of the person; acknowledgement of the incidents; initial police response (e.g. arriving quickly); (the opportunity to) provide input in the criminal procedure; being treated as an interested party and being consulted; assent and power to make decisions; no role in the process; process characteristics (e.g. speed); outcome (e.g. arrest, punishment, material and immaterial restitution); meeting between victim-offender; information relating to their role as a party with an interest in the case; explanation (about systems etc.); other information (about offender, crime, motives); information about prevention; practical matters (e.g. return of possessions, separate waiting rooms); immediate safety; preventing repetition and protection of self and others.

447 Ten Boom & Kuijpers found 12 studies that contained information on the size of the group with a certain need. By selecting the two needs that were mentioned most often in each study, they were able to identify the needs that were mentioned more often than others.

448 L. Balogh, J. van Haaf & R. Römkens, *Tot hier en niet verder. De effectiviteit van AWARE in vergelijking met een 112+ aanpak van belaging*, Tilburg: IVA 2008, p. 14.

449 M.P. Brewster, *Exploration of the experiences and needs of former intimate stalking victims: Final report submitted to the National Institute of Justice*, West Chester: West Chester University 1999.

450 R.-M. Bruynooghe, A. Vandenberk, L. Verhaegen, A. Colemont & I. Hens, *Geweld in het meervoud. Een kwalitatieve benadering van de betekenissen rond geweldvormen in België*, Diepenbeek/Louvain-la-Neuve: SEIN 2003; A. Groenen, *Stalking. Risicofactoren voor fysiek geweld*, Antwerpen: Maklu 2006; P. Tjaden & N. Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey*, Washington D.C.: Department of Justice, National Institute of Justice 1998.

451 M. Malsch, J. Muijsken & M. Visscher, 'Geweld in perspectief. Mishandeling in de huiselijke sfeer en belaging in het strafproces', *Delikt en Delinkwent* (4) 2005, pp. 360-379.

victims are rebuffed at an even earlier stage. Victim Support Netherlands estimates that at least 25% of the stalking victims are turned away at the police station against their will without even having a notification taken down, let alone a report.[452]

An important question in this respect is whether the moderate legal follow-up can be attributed to legal obstacles, such as stringent evidentiary requirements, or whether a resistant practice and negative police attitudes towards stalking are responsible. It may be assumed that both elements have an influence. Kamphuis et al. found that a lack of knowledge about stalking legislation, as well as a stereotyped attitude towards stalking, results in less action by the police.[453]

The aim of this chapter is to find out whether there are other problems than those found in the Victim Support Questionnaire, whether stalking victims have special procedural and distributive needs, and, if so, to what extent the Belgian and Dutch criminal justice system is responsive to these needs.

This explorative study tries to answer the aforementioned questions by means of 45 semi-structured interviews with Dutch and Belgian victims of stalking. The interviews were conducted in two different countries (Belgium and the Netherlands) instead of one in order to see whether the needs transcend national boundaries or whether they are country-specific. The subsequent choice for Belgium and the Netherlands was inspired in the first place by the fact that not much stalking research had been carried out in either of those countries. The other reason was of a more pragmatic nature: contacts had already been established (either through the Victim Support Questionnaire or through the Leuven Police district) and there was no language barrier.

The chapter is structured as follows. First, a literature overview of the current knowledge on stalking victims' needs and problems with the criminal justice system will be given followed by a brief description of the stalking legislation that has been implemented in Belgium. Then an interpretative summary of the interviews will identify whether obstacles are present in the two judicial systems and whether there is room for improvement.

6.2. Literature review

Next to the uncertain effectiveness of the criminal justice system, which was dealt with in Chapter 5, other difficulties for victims of stalking have come to light as well. Although involvement in legal proceedings may cause significant emotional stress in any person, certain characteristics of the criminal justice system may be even more problematic to victims of stalking than to others. Unfortunately, very few studies have examined the difficulties in seeking legal redress with an exclusive focus on stalking.[454] Where stalking victim dissatisfaction with the criminal justice system is concerned, there are four important issues that reappear in most

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452 This estimate was expressed during a personal conversation of the author with the former research director of the organisation.

453 J.H. Kamphuis, G.M. Galeazzi, L. De Fazio, P.M.G. Emmelkamp, F. Farnham, A. Groenen, D. James & G. Vervaeke, 'Stalking perceptions and attitudes among helping professions. An EU cross-national comparison', *Clinical Psychology and Psychotherapy* (12) 2005, pp. 217-218.

454 P. Tjaden, 'Stalking in America. Laws, research and recommendations', in: R.C. Davis, A.J. Lurigio & S. Herman (eds.), *Victims of Crime*, Thousand Oaks: Sage Publications 2007, pp. 75-89.

studies: police and judicial inaction; fear of retaliation; fear of confrontation with the offender; and dismissive treatment by the police.

The first recurring theme is inactivity on the part of the police.[455] Taking into account that only a part of the stalking cases is reported to the police, it is remarkable that the police remain inactive in a significant proportion of the reported cases. In the United States, about half of the stalking incidents were reported to the police but, in 18.9% of these cases the police did nothing.[456] Comparable results could be found in a qualitative study of Logan et al. and in the British Crime Survey.[457]

The disinclination of law enforcement officers to intervene may possibly be caused by the (alleged) high attrition rate due to the withdrawal of the complaint by the victim.[458] A second explanation for police inaction could lie in the perceived difficulty to procure sufficient evidence.[459] The collection of evidence in criminal cases needs to meet a higher standard than in civil law suits.[460] Criminal proceedings are characterized by such constitutional protection as due process of law and proof beyond a reasonable doubt. Given the ongoing and often varying pursuit tactics, the thin line between legal and illegal behaviour, the lack of obvious injury, and the unpredictable nature of stalking, police and public prosecutor may believe the evidentiary threshold too high in many stalking cases.

If stalking victims' experiences were positive, it was because the police had come into contact with the stalker at an early stage. Sometimes these early interventions were effective in reducing the harassment, but even when the stalking remained unchanged, active police involvement could bring about a positive effect if only in the perception and the feelings of the victim.[461] Victims who were lucky enough to encounter a specialised police officer who took an active interest in their case were in general more positive about the police.[462]

The second theme concerns the fear of retaliation. In her literature review, on challenges that female victims of interpersonal violence have to face when entering the court system, Jordan

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455 For example, E. Finch, *The criminalisation of stalking: Constructing the problem and evaluating the solution* (diss.), London: Cavendish 2001; Morris et al. (2002).

456 Tjaden & Thoennes (1998).

457 T.K. Logan, J. Cole, L. Shannon & R. Walker, *Partner stalking. How women respond, cope, and survive*, New York: Springer Publishing Company 2006; S. Walby & J. Allen, *Domestic violence, sexual assault and stalking: Findings from the British Crime Survey*, London: Home Office 2004.

458 Finch (2001).

459 K.L. Attinello, 'Anti-stalking legislation: A comparison of traditional remedies available for victims of harassment versus California Penal Code Section 646.9 (California Anti-Stalking Law)', *Pacific Law Journal* (24) 1993-4, pp. 1945-1980; A. Groenen, *Stalking. Risicofactoren voor fysiek geweld* (diss.), Antwerpen: Maklu 2006; Malsch (2004).

460 Attinello (1993); Malsch (2004).

461 W. d'Haese & A. Groenen, 'Politie-interventie bij slachtoffers van stalking', *Politiejournaal & Politieofficier* (9) 2002, pp. 19-23; J. Hoffmann, 'Stalking. Polizeiliche Prävention und Krisenmanagement', *Kriminalistik* (12) 2003, pp. 726-731.

462 D'Haese & Groenen (2002); S. Morris, S. Anderson & L. Murray, *Stalking and harassment in Scotland*, Edinburgh: Scottish Executive Social Research 2002.

mentions fear of retaliation as one of the primary barriers to seeking legal intervention.[463] These fears are not entirely unfounded, as appears from the fact that some victims did experience threats or actual acts of retaliation from the part of the offender[464] or that they were intimidated into dropping the charges after the suspect was released on bail.[465] In American and English community studies, about 15% of the victims did not report the stalking to the police for fear of escalation or retaliation.[466]

A third reason for victims to refrain from invoking the help of the local authorities is the dread of being confronted with the stalker. Given the adversarial nature of the American court systems, victims are confronted with the offender and Jordan found that they experienced this as very upsetting.[467] Even though the Dutch court system is based on an inquisitorial system without any cross-examinations taking place, victims still run a significant risk of having to appear in court as witnesses and hence see themselves exposed to the very person they wish to avoid. This idea may influence the decision of the victim to refrain from lodging a complaint or to withdraw a complaint already filed.

Negative treatment by the police is a fourth reason for victims' dissatisfaction. Finch's interviews with stalking victims brought to light that one of the main complaints against the police was the improper treatment that they had received.[468] Logan et al. found similar results.[469] The negative treatment often took the form of reluctance of police officers to take victims of stalking seriously. In another study, two thirds of the victims (n=48) who had been in contact with the German police were very satisfied with their work, but only half of them felt taken seriously.[470] In a larger study of 190 victims, the result was even more sobering: 73% did not feel taken seriously by the police and 86% thought that the steps that were taken were insufficient.[471]

A reason for the lack of positive treatment may be found in the disinclination to acknowledge stalking as a genuine crime worthy of punishment.[472] Stalking incidents were dismissed as 'only domestic' or as private matters in the relational sphere that were inappropriate for legal

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463 C.E. Jordan, 'Intimate partner violence and the justice system: An examination of the interface', *Journal of Interpersonal Violence* (19) 2004-12, pp. 1412-1434; Also E.W. Gondolf, J. McWilliams, B. Hart & J. Steuhling, 'Court response to petitions for civil protection orders', *Journal of Interpersonal Violence* (9) 1994, pp. 503-517; B. Hart, 'Battered women and the criminal justice system', in: E.S. Buzawa & C.G. Buzawa (eds.), *Do arrests and restraining orders work?*, Thousand Oaks: Sage Publications 1996, pp. 98-114.

464 Jordan (2004).

465 Attinello (1993).

466 Tjaden & Thoennes (1998); Walby & Allen (2004). Also Finch (1999); M.J. Carlson, S.D. Harris & G.W. Holden, 'Protective orders and domestic violence: Risk factors for re-abuse', *Journal of Family Violence* (14) 1999, pp. 205-226.

467 Jordan (2004). Also Morris et al. (2002).

468 Finch (2001).

469 Logan et al. (2006).

470 Bettermann as cited in J. Hoffmann (2003).

471 Hoffmann (2003).

472 Bradburn (1992); M. Rupp, Rechtstatsächliche Untersuchung zum Gewaltschutzgesetz. Zusammenfassung. Ein Überblick über die Ergebnisse aller Teilstudien, 2005, accessed May 9, 2008, at the German Federal Ministry of Justice website: <http://www.bmj.bund.de/files/-/1024/Evaluation_GewaltschutzG_Summary.pfd>.

intervention.[473] The trivialisation of stalking by legal professionals has a major influence on their treatment of stalking victims.[474]

Next to the four recurring problems, other difficulties are also mentioned in the literature. Stalking is sometimes poorly registered and filed, which causes vital information to become lost and makes the analysis of stalking cases difficult.[475] Furthermore, the difficult task of evidence collection and documentation was sometimes too easily placed upon the shoulders of the victims.[476] Finally, the slow pace of the process,[477] the need to recount 'the whole story' each time a new incident occurs,[478] and the lack of information on the progress of the case[479] provoked frustration. Before assessing whether and how Dutch and Belgium victims have experienced these issues in practice, it is essential to first take a brief look at the way stalking was criminalised in Belgium.

6.3. Stalking legislation in Belgium

Belgium has a stalking law that came into force in 1998. The new Article 442bis that was introduced in the Belgian Penal Code states:

'He who has harassed a person while he knew or should have known that due to his behaviour, he would severely disturb this person's peace will be punished with imprisonment of fifteen days to two years and with a fine ranging from 50 euro to 300 euro or with one of those punishments. The behaviour described in this Article can only be prosecuted on complaint of the person claiming to be harassed.' (own translation)

As in the Netherlands, prosecution can only occur at the request of the person against whom the crime was committed and the police are allowed to arrest the stalker and hold him or her in preventive custody if this is deemed necessary.

As is shown by the definition above, Belgium has – just like the Netherlands – clearly opted for a broad definition of stalking. However, in Belgium, even a *non-recurring* disturbance of a person's peace and quiet can suffice to classify behaviour as stalking. Furthermore, in contrast to many Anglo-Saxon countries, both the Belgian and the Dutch provision do not include a

473 Bradburn (1992); Morris et al. (2002); B.H. Spitzberg, 'The tactical topography of stalking victimization and management', *Trauma, Violence and Abuse* (3) 2002, pp. 261-288.

474 Kamphuis et al. (2005); Logan et al. (2006).

475 Malsch (2004).

476 W.R. Cupach & B.H. Spitzberg, *The dark side of relationship pursuit. From attraction to obsession and stalking*, Mahwah: Lawrence Erlbaum Associates 2004, pp. 150ff.; Spitzberg (2002); B. Kerbstein & P. Pröbsting, 'Stalking', *Zeitschrift für Rechtspolitik* (2) 2002, pp. 76-78; Malsch (2004); J.H. Gist, J. McFarlane, A. Malecha, N. Fredland, P. Schutz & P. Willson, 'Women in danger: Intimate partner violence experienced by women who qualify and do not qualify for a protective order', *Behavioral Sciences and the Law* (19) 2002, pp. 637-647; I. Dussuyer, 'Is stalking legislation effective in protecting victims?', paper presented at the *Criminal justice responses conference*, Sydney, Australia 2000.

477 Jordan (2004); P. Finn & S. Colson, *Civil protection orders: Legislation, practice and enforcement*, Washington, D.C.: National Institute of Justice 1990; Malsch (2004); Rupp (2005).

478 Morris et al. (2002).

479 Finch (2001).

'fear' requirement as a constituent element of stalking. Clearly, the focus is on the protection of a person's privacy, not necessarily on the instilment of fear.

The creation of new legislation like Article 442bis of the Belgian Penal Code and Article 285b DCC may seem impressive, but it says little on the way these rules work out in practice. Much depends on the attitude and the mutual understanding of the parties involved. Prejudiced attitudes towards stalking, for example, can cloud the judgment of the police as to the appropriateness of an intervention. The introduction of new crimes may be nothing more than 'paper compliance' to societal or political pressure. Victim interviews are therefore needed to see how both Articles are implemented in practice.

6.4. Research method

Semi-structured interviews were chosen as the appropriate research strategy for this project, since interviews with open-ended questions are particularly suited to carrying out explorative research. There is very little research on the needs of stalking victims in their contact with the criminal justice system and, as a consequence on the alternative needs these victims may come up with. Interviews enable respondents to formulate any answer they see fit and to tell about their experiences for as long as they need.

The data set consisted of 20 Dutch (2 male and 18 female victims) and 25 Belgian (3 male and 22 female) victims of stalking between 18 and 50 years old who had all been in contact with the criminal justice system. In Belgium, all interviewed victims had suffered from ex-partner stalking, in the Dutch sample there were also four cases of stalking by acquaintances. In the Netherlands, the interviews were the outgrowth of the Victim Support Questionnaire. Victims who had indicated on their questionnaire that they were willing to participate in an interview were kept apart from the others and from this group 20 victims were selected randomly. The sample consisted of victims who were overall satisfied with the criminal justice system and those who were not. The Dutch interviews were conducted over the telephone for reasons of efficiency. Each interview was tape-recorded and later transcribed. Data were collected from March 2007 to June 2007.

In Belgium, all stalking victims who had contacted the police in two cities, Leuven and Hasselt, were invited to participate in the project. Leuven and Hasselt were chosen, because the social workers at the police station had all followed a course on ex-partner stalking. Victims from this group were selected randomly for an interview. The victims who were willing to participate were invited to the social service desk of the police station where the Belgian researcher and stalking expert Anne Groenen held face-to-face interviews.

In both countries, the same semi-structured interview protocol was used with open-ended questions (see Appendix 4). The interviewers asked victims to recount the stalking incidents that had happened to them, what actions the police and public prosecutor had taken in their case, what effect these actions had had on the stalking, what they had experienced as positive or negative aspects of the law enforcement system and what they would recommend to improve the criminal justice response. By inquiring after their expectancies of the police contact and whether victims had had (unfulfilled) wishes, it was attempted to identify stalking victims' needs.

All respondents were asked the same questions, but there was room for elaboration if

something interesting came up. From this respect, the emphasis of the interviews differed somewhat, depending on the reaction of the victim. Whether respondents accurately understood the questions was not checked, but the questions were rather straightforward and respondents showed no signs of incomprehension (e.g., by giving irrelevant answers).

After conducting the interviews, the researchers read the interviews independently from each other and recognised certain themes or clusters of answers. These themes formed the basis of the description. In Belgium, the interviews were coded and the interrater reliability of the coding was calculated with the help of Cohen's kappa. Five interviews were coded by two Belgian researchers[480] and it turned out that they almost never disagreed on the coding (K >.90). In the Netherlands, there was not an independent calculation of Cohen's kappa, but the same interview protocol was used and the coding was congruent with the Belgium sample. Since the same interview protocol was used and since many of the answers were unequivocal ('they did not take me seriously'), it was not hard to interpret the interviews in the same manner as in Belgium. The few answers that were vaguely phrased or that required a more subjective judgment about the respondent's meaning were discussed amongst the authors to make sure that both authors agreed on the final interpretation. All themes that could be distinguished were included in the analysis (also those that were only mentioned by one or two victims) and after that, the researchers selected appropriate quotes in accordance with the established themes.

6.5. Results

A first result of the experience with the criminal justice system is that victims have mixed feelings towards the police. When the police took their cases seriously and tried to initiate an intervention, victims generally felt supported and satisfied.

> I am satisfied about the relief and treatment of the police force and realise that they can only act within certain boundaries. The police had informed me about the legal procedures and referred me to the service of Victim Support. Soon after my report the police contacted me again and I felt supported (Belgian female victim of ex-partner stalking).

Although many victims were satisfied, the Belgian respondents were overall more satisfied than their Dutch counterparts. This probably had to do with the fact that in Belgium, the respondents were selected from police districts which paid much attention to stalking victims and which had developed best practices. In the Netherlands, the sample also included victims who had come into contact with police districts with a more indifferent attitude towards stalking. Apart from the difference in overall satisfaction, the Dutch and Belgian respondents did not differ as regards their other answers. The four primary issues that emerged in the literature review plus the questionable effectiveness appeared to be the main causes of concern to Dutch and Belgian victims alike.

480 These were Anne Groenen and one of her co-workers.

6.5.1. Police inaction and negative treatment

Police inaction and negative treatment were often bracketed together by the respondents and will therefore be dealt with jointly. Especially the Dutch victims criticised the police regularly for not doing anything or – when they did act – for postponing serious action until months or even years had elapsed. Police inaction was frequently related to the disinclination to acknowledge the behaviour as a genuine crime worthy of punishment. Officers would sometimes explicitly trivialise the victims' experiences, either because they did not view the behaviour as a serious crime or because they pitied the stalker after a break-up. At other times, their indifference was expressed by their insensitive advice (e.g., to move) or the blunt refusal to take down a report. The lack of interest was generally not justified by the lack of seriousness of the stalking incidents. Even when victims claimed to have been physically assaulted or threatened, the police still dismissed their case.

> He drove by my house several times a day with his van. Pure intimidation, but the police said 'You are inside the house, aren't you, so you're safe' (Dutch female victim of stalking by an acquaintance).

In line with the trivialisation of the stalking as such, the police were also accused of not taking the victim seriously. Victims reported having been disbelieved, insulted, laughed at or even blamed for the stalking themselves.

> I was viewed as being the perpetrator rather than the victim. Only after I myself had gathered and presented evidence to the contrary was I believed (Dutch female victim of ex-partner stalking).

Another worrying finding was that some police officers seemed to abuse the option to take down a notification instead of an official report. The possibility to only notify the police of a criminal offence without the obligation to file for a report was inserted into the Dutch and Belgian criminal systems for crimes that could only be prosecuted after an official complaint of the victim. Some victims are reluctant to contact the police if this contact automatically results in an official report. Their reluctance can derive for instance, from the unwillingness to embarrass their (ex-)partners or from fear of retaliation. Still, these victims can feel the need to have the offence recorded without actually having to press charges. The police might be able to give them practical advice, and the knowledge that the misconduct has been officially documented by the police can already provide a sense of relief. It was not, however, intended as a means to conveniently put off the victim.

> Dutch female victim of ex-partner stalking: 'In the end we went to the police, but the police refused to take down a report. They said we'll first take down a notification, and another notification, and another notification...'
> Interviewer: 'Did they say why they refused to take down a report?'
> Victim: 'They just said, it's a civil case, so we'll only take notifications.'

Interviewer: 'How often was a notification taken down?'
Victim: 'I happened to hear three weeks ago that there were a total of 53 notifications in my name.'

But even when victims had succeeded in convincing the police that both the stalking and their victimisation were genuine, this was still no guarantee of consequent police action or prosecution. In contrast to the importance that seemed to be attributed to stalking given the enactment of Article 285b DCC or Article 442bis of the Belgian Penal Code and the adoption of national prosecutorial guidelines in the event of ex-partner stalking, several cases were dismissed because stalking was not prioritised by the police departments in question. At other times, reports were not taken down or cases were dismissed on the grounds that there was insufficient evidence to proceed. However, the assessment that there was too little evidence was sometimes based on flawed notions as to what behaviour actually constitutes stalking, what facts can serve as evidence and what powers the police have in investigating and prosecuting stalking. For instance, in contrast to what a Dutch victim was told, the police *are* authorised to retrieve information from telephone providers and to act without a civil restraining order being imposed first.

Victims did not only complain about inaction or a lack of proper treatment. Surprisingly enough, certain victims thought the police were too vigorous. This happened when victims' needs and the goals of the criminal justice system deviated. The assumption that victims always want their stalker to go through the entire criminal procedure that starts with a report and ends in a conviction is a false one. The primary concern of victims is protection against the stalker and not necessarily retribution or punishment. As long as their safety is procured, some victims care little about the means by which this result was achieved. In this respect, the efforts of the police were sometimes diametrically opposed to the needs of the victims, because of their focus on an eventual conviction. If that goal appeared unattainable, the police sometimes dropped the case altogether without contemplating other possible solutions that might be just as effective in putting the stalking to a halt.

The only thing I wanted was that the stalker would leave me alone. For me it wasn't important that he was arrested, but the police didn't understand that (Belgian victim of stalking by an acquaintance).

6.5.2. Fear of retaliation

In conformity with foreign results, fear of retaliation or escalation acted as important barriers to filing a report for some victims in the current sample as well.

In the course of time, several notifications were taken down, only at the moment when they said 'would you like to file an official report', I was afraid (Dutch female victim of ex-partner stalking).

That these fears are not entirely unfounded appears from the fact that some victims actually did experience threats or actual acts of retaliation from the offender.

> Because of this entire story, the thing started escalating with pursuit, stalking – of her as well – and he drove around my house for a long time and he (...) bashed my fence and ruined my fountain (Dutch female victim of an acquainted stalker).

6.5.3. Fear of confrontation with the stalker

The fear of a confrontation with the offender in the court room was also mentioned on several occasions as an important disadvantage of taking recourse to criminal justice.

> I think it is completely absurd that I have to appear in court next to the stalker, while I want to do everything to avoid him and to discourage him from stalking (Belgian female victim of stalking by an ex-partner).

6.5.4. Ineffectiveness

When the aforementioned hurdles are overcome and both the victim and the judicial authorities are willing to follow the case through, this does not automatically imply that the stalker is deterred. Both the Belgian and the Dutch victims indicated that most of the stalkers did not stop after the first interrogation. Even multiple reports and consequent actions by the police remained without any real effect. Often the stalking incidents temporarily decreased, but this effect disappeared after a while. Sometimes the harassment continued even when the stalker was in detention or in prison.

> The stalking only stopped right after the perpetrator was imprisoned and we had sent a letter to the prison. In prison the stalking initially just continued (Dutch female victim of ex-partner stalking).

6.5.5. Recommendations

Finally, victims were asked to give some recommendations to the police or the justice system on the way they handle stalking cases. In addition to the recommendation to take victims more seriously and to take serious and timely action against the stalkers, victims also had three other suggestions for the improvement of the intervention strategy. First of all, victims criticised the police and the judicial services for not keeping them sufficiently informed during the procedure.

> There is a lack of information about possible intervention strategies in stalking cases. The information given by the police and by the Pulic Prosecution Service is deficient. I still have no idea what is happening with my file. I was never informed about the actions undertaken, for how long the restraining order was valid, et cetera (Belgian female victim of stalking by an acquaintance).

If the reluctance to provide information is inspired by the fear of being the bearer of bad news, this fear may be overcome by the fact that any news is better than no news at all. In a case where the victim was meticulously informed of all the trials and tribulations that would probably lie ahead of her, she was still pleased with this information:

> They explained to me that it was a long road ahead and that it would cost a lot of energy. I was advised to do something. He was already known to the police. (...) The information on the police website on what I could do myself has been of much use to me. It revives one's strength even though the action lies in the advice not to do anything ... (Dutch female victim of ex-partner stalking).

Secondly, many victims point out that it is very frustrating to have to recount the story several times to different police officers. Despite the fact that certain local initiatives had been launched to bring these cases under the supervision of only one officer or one victim service – an initiative that was highly appreciated by the victims who profited from this policy – in practice, there appeared to be several difficulties. Victims reported problems with coming into contact with the officer in charge of the case, either because police officers were transferred or removed from the case, or because the victim had moved to another place. Victims explicitly expressed the need for one contact person or a limited number of persons who are well aware of the particulars of the case and the procedures that govern stalking cases in general. This would save the victims, as well as the police officers involved a lot of time and frustration.

> The biggest problem is that the case has been transferred about five or six times already. Every time a new officer takes charge of the case, he thinks like: 'I'll just give the guy a call'. An officer who is better aware of the case will stop calling all the time. He'll say: 'That's enough!' (Dutch female victim of ex-partner stalking).

Finally, a lengthy procedure with multiple contacts also involved practical issues that victims perceived as unpleasant. A pragmatic finding that causes great concern is that – perhaps due to the necessity to follow a case through for such a long period – occasionally documents got lost and cases were filed incorrectly. Especially when stalking is concerned, where a court will have to establish the repetitiveness of the behaviour, proper documentation and registration of the incidents is of vital importance.

Unsurprisingly, positive remarks on the police and the Public Prosecution Service exactly mirrored the complaints described above. Timely and accurate action and the invention of creative solutions were highly appreciated. Sometimes victims were put on a special list and their phone calls were given priority to ensure a quick response. Taking the victim and the crime seriously, showing empathy and treating them with respect also appear to be the key factors in victim satisfaction.

> I believe that the cooperation I received from the police is dependent on the personality of the police officer that came to my rescue. I think I was 'lucky' in this respect (Dutch female victim of ex-partner stalking).

6.6. Limitations

This study was first of all limited in the sense that the respondents were recruited in a different manner. The interviewees in the Netherlands were found through a victimisation survey distributed with the help of Victim Support Netherlands, while the interviewees in Belgium were found because they had contacted the police and were helped by the social service department of the police. It was not possible to employ the same sampling procedure in both countries, since Belgium did not have a comparable Victim Support organisation. However, given the objective of the study, the different sampling poses no real threat to the validity or reliability of the findings. The main goal was to recruit people who had been in contact with the criminal justice system as a consequence of their stalking victimisation and this applied to all the interviewees.

In Belgium, the respondents were selected from police districts which paid much attention to stalking victims and which had developed best practices. In the Netherlands, the sample also included victims who had come into contact with police districts with a more indifferent attitude towards stalking. As a consequence, the Belgian respondents seemed more satisfied and their needs were more often met. Moreover, due to the different sampling, the Dutch sample consisted also of people who had contacted the police some time ago, whereas the Belgian sample had more recent experiences.

However, since the purpose of the study was not to generate quantitative data on the prevalence of stalking victims' needs and how often needs were met, but merely to establish an inventory of possible stalking victims' needs and any problems with the criminal justice system, this should not be a problem. This study specifically does not warrant any generalisations to the workings of the criminal justice system in the different countries, nor to the level of satisfaction of Belgian versus Dutch victims. In order to do that, our findings should be substantiated by more quantitative research.

Another limitation was that the respondents of the two countries were interviewed in different ways. An advantage of interviews by telephone over face-to-face interviews is that the influence of social desirability is somewhat reduced. People who are contacted by phone may be more inclined to talk openly about intimate topics than people who are interviewed in person.[481] The interviewee is able to react more anonymously in comparison to people who come face-to-face with their interviewer, and this anonymity could stimulate openness and sincerity. Whether the interviewing method was of influence on the respondents' answers was not controlled for. However, in the experience of both authors, there was no difference in the length and content of the answers. None of the interviewees seemed to hold back during the conversations. On the contrary, all of them seemed pleased to have the opportunity to give their opinions, also the ones who were interviewed in person.

A final limitation could be that, although each of the interviewees came across as a genuine victim, the group of 45 victims contained persons who falsely claimed to be a victim

481 For example, D.B. Baarda, M.P.M. de Goede & M. Kalmijn, *Enquêteren en gestructureerd interviewen*, Groningen: Wolters-Noordhoff 2000, p. 17.

of stalking.[482] There was no possibility to check for this, for example, with the help of other objective information. Again, this limitation can be put into perspective by the notion that false claims of stalking victimisation are uncommon.[483]

6.7. Conclusion

There is much overlap between stalking victims and victims of other crimes where specific needs are concerned. Given the nature of the crime, much emphasis was placed on the need for acknowledgement of the incident and the person (positive treatment), immediate safety or prevention of repetition (effectiveness of the intervention and action by the police), information on their case, and results such as arrest and punishment (action by the police). These needs reflect both procedural and distributive elements. The additional need of having one contact person present who knows about the particulars of the case was related to the length of the procedure and the necessity to come into contact with the police on more than one occasion. A contact person would prevent the victim from having to tell his or her story over and over again, a procedure that often causes extra stress. The need for proper registration of their file was also important, especially from the point of view of the perceived difficulty to prove stalking. Every incident has to be documented meticulously in order to establish the repetitiveness of the behaviour, a requirement that is unique to the crime of stalking. Finally, there was also sometimes a need *not* to prosecute the stalker. Where some victims wish to have their offender punished for the crime, others are more interested in the cessation of the stalking and have a genuine fear to follow the legal procedure through. Ironically enough, too vigorous enforcement can have negative consequences as well. The police seem to have a bias towards prosecuting, so where certain victims felt a need for other solutions from the police besides a trial, their requests fell on deaf ears. The legal system should be receptive to these needs as well.

Apart from the need for one contact person, the need for proper documentation of all the incidents and the need to receive protection without automatic prosecution, no additional needs were found. These needs seem to transcend national boundaries, since both Belgian and Dutch victims mention the same needs.

What is remarkable, however, is the extent to which the criminal justice system is responsive to stalking victims' needs. Although it must be stressed that most of the victims were satisfied with the way the police handled their case, there were still some problems. Most of the reported problems that stalking victims encountered had to do with lack of positive treatment, ineffectiveness of interventions, fear or retaliation, fear of confrontation, and inaction by the police.

In the current sample, police inaction was frequently related to their disinclination to acknowledge the behaviour as a genuine crime or not taking the victims seriously, which often resulted in negative treatment of victims. Victims were not always taken seriously, not only to the extent that the police denied the existence of the crime or blamed the victims, but even to

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482 See also Chapter 5.

483 M. Pathé, P.E. Mullen & R. Purcell, 'Stalking: False claims of victimisation', *British Journal of Psychiatry* (174) 1999, pp. 170-172.

the extent that victims were accused of being the offender instead.

Certain precautions are not always unjustified. There have been cases in which people have accused innocent others and stalkers have been known to falsely accuse their victims. Bearing this in mind, it is understandable that the police are on their guard for false accusations and that they do not take every complaint at face value without corroborating evidence. Still it is wrong to take false accusations as a general point of departure when stalking is concerned. Known cases of false accusations are sparse[484] and do not justify a general distrust of people who wish to report a case of stalking. Only after strong evidence to the contrary it may be safely assumed that the alleged victim is wrong, and as long as that is not the case, a victim should be treated as a victim unless proven otherwise.

Another possible explanation for the improper conduct of the police against the complainants may be that some victims do not live up to the image of the 'perfect' or 'ideal' victim. An ideal victim is willing to meticulously collect, document, and supply evidence to the police, but not to contact them or to complain too often; to be understanding of all the possible procedural and evidentiary predicaments inherent in the criminal justice system; to keep calm even though the procedure is lengthy and immediate protection may not be provided; and finally, to stay away from contacting the stalker him- or herself. It may not come as a surprise that reality is often more complex than that. Victims sometimes lose their temper, confront their stalker, and may openly show their disappointment with the police.

The unwillingness to take down official reports and to offer only registrations or notifications instead could be seen as a manifestation of this negative attitude. When notifications are used as a way to diminish the pressure on victims by giving them the authority to decline prosecution while still enabling them to have the incident recorded with an official governmental agency, the option is to be welcomed. In our sample, some victims were afraid to lay an information against the stalker. However, when the police use this possibility at their own discretion irrespective of the victim's wishes, it can be a source of extra stress. Taking down a notification should not be an option at the discretion of the police. The victim has the right to report someone to the police (Article 161 DCCP).

484 M. Pathé, P.E. Mullen & R. Purcell, 'Stalking: False claims of victimisation', *British Journal of Psychiatry* (174) 1999, pp. 170-172.

CHAPTER 7

INTERVIEWS WITH PUBLIC PROSECUTORS AND POLICE OFFICERS

7.1. Introduction

In the previous chapters it was revealed that when a victim seeks help through the criminal justice system in an attempt to counter the stalking he or she is not necessarily approaching the light at the end of the tunnel. Many victims felt that they were not taken seriously, they complained about the length of time it took before the police came into action and they perceived difficulties with furnishing proof. Although in principle these are important indicators of possible problems of stalking victims with the criminal justice system, this picture is neither complete, nor undeniably correct. A victims' questionnaire and some victims' interviews should not dominate the discussion on how to improve the criminal justice approach to stalking, at least not without giving the criminal justice system itself the opportunity to react to the 'allegations' or to supplement the results of the questionnaire with problems that did not surface during the survey. After all, a victim may perceive matters differently from the police officer or the public prosecutor in charge, a victim may be unaware of bottlenecks further down the line and sometimes a victim him- or herself may be the cause of the delay in or even the failure of the criminal justice system to respond effectively to a case of relentless pursuit. In line with the principle of hearing both sides of the argument, the police and the Public Prosecution Service were given a chance to present their views on stalking and its related issues.

In order to uncover this view, in section 2 a description will be given of the only guideline for the police and the Public Prosecution Service to go byas a in their approach to (certain) stalking cases: the Domestic Violence Instruction *(Aanwijzing Huiselijk Geweld)*. This Instruction, which was drafted by the Board of Procurators General *(College van Procureurs-Generaal)*, prescribes the procedure that should be followed in cases of domestic violence, which includes stalking perpetrated by family, ex-partners, and family friends. In section 3, the results of the only quantitative study into the recognition and perceptions of stalking by police officers and general practitioners that included Dutch respondents will be discussed. This study, conducted in Belgium, England, Italy, and the Netherlands, yielded 64 analysable questionnaires from Dutch police officers and it is a first indication of how the police perceive stalking and how their perception compares to that of police officers in other countries. In Section 4, finally, the most important findings of seven semi-structural interviews with police officers and public prosecutors will be summarised. These practitioners were asked to explain how they generally handled stalking cases, to respond to certain (negative) outcomes of the victims' survey, and to indicate what problems they had encountered in the fight against stalking.

7.2. The Domestic Violence Instruction

The consistency of domestic violence, the risk of recidivism and the damaging effect of domestic violence on children all caused the government to design a specific policy for cases of domestic violence. The report 'Private violence, public issue' *(Privé geweld, publieke zaak)* of April 2002 prescribed an integral approach under the direction of the municipality and in 2003 the first Domestic Violence Instruction resulted from the report's line of policy.[485] This Instruction was drafted by the Board of Procurators General and it contains regulations on the investigation and prosecution of domestic violence for the police and the Public Prosecution Service. The aim of the Instruction is to accomplish a more effective approach of the police and the Public Prosecution Service in reaction to domestic violence by contributing to a) the immediate cessation of domestic violence; b) the prevention of recidivism by means of specific interventions; c) the restoration of the violated norm; d) the increase of the willingness of victims to report to the police; e) the safety of the victim, and f) the safety of children as witnesses of domestic violence. The actions taken by the police and the Public Prosecution Service have to protect the interests of the victim and any children who have witnessed the violence.

The Domestic Violence Instruction begins with a delineation of its scope through a description of the term domestic violence: 'Domestic violence is violence perpetrated by a person within the domestic circle of the victim.' Physical and sexual violence, stalking and intimidation are examples of domestic violence. Although not applicable to all stalking victims, this Instruction can be of importance to victims who are stalked by their ex-partners, family members, or family friends, since these persons are mentioned as possible perpetrators of domestic violence. It is important, because this group happens to make up the largest part of the stalking caseload of the police. The Instruction promotes an energetic approach to domestic violence with an emphasis on perpetrator treatment in an early stage. It contains not only rights of victims of domestic violence and stalking that form an addition to the rights they could already exercise under more general regulations, but it also provides the police and the Public Prosecution Service with an elaborate script on how to deal with cases of domestic violence. The additional rights arising out of the Instruction that may be relevant to victims (of stalking) are the following:

- In each phase of the procedure, the victim should be informed beforehand on the time when and the conditions under which the suspect will be released. Local agreements to this effect need to be made with the police, the courts, and/or the examining magistrates.
- The victim is informed by the police on the criminal proceedings, is encouraged to report and/or complain and is referred to specialised support organisations.
- The police have the victim indicate whether he or she wants a restraining order to be imposed.[486]
- The police make sure that the victim's address is not mentioned in the report if the victim

485 On 1 January 2009, the original Instruction was replaced by an updated version (Aanwijzing huiselijk geweld of 1 January 2009, *Staatscourant [Government Gazette]*, 2008, 253). The most recent Instruction is discussed in the current section.

486 The actual imposition of a restraining order as a condition for a suspension of the preventive custody or a suspended sentence, of course, always depends on the decision of the examining magistrate or the court.

so desires; they point out the possibility of electing the police station as the address for service; and the place of residence of persons in a shelter is never mentioned.
- When the examining magistrate decides on whether or not to suspend the suspect's preventive custody, the public prosecutor makes sure that the victim is informed of the examining magistrate's decision on time.
- The Public Prosecution Service informs the victims of the reasons for dismissal and points out the possibility to challenge this decision on the basis of Article 12 DCCP.

In order to realise a proper implementation of the Instruction, certain preconditions need to be fulfilled. First, close cooperation between the police, the Public Prosecution Service, the aftercare and resettlement organisation, and the perpetrator treatment organisations need to be established and monitored. Secondly, the police and the Public Prosecution Service need to establish uniform registration of domestic violence cases by means of earmarking these cases. Thirdly, the police force management team and the Public Prosecution Service need to see to it that an adequate level of knowledge exists amongst the employees whose task it is to deal with cases of domestic violence. Fourth, an official in charge of the (implementation of) the domestic violence policy needs to make sure that there is uniform and timely settlement of domestic violence cases within his or her region. In designing an appropriate strategy, he or she is offered a helping hand by the detailed protocol in the Instruction, which contains a step-by-step procedure. For every possible scenario, the prescribed or most suitable course of action is set out. The most remarkable feature of the protocol seems the emphasis on (rigorous) action as portrayed by the obligation to arrest the suspect if, given the offence, preventive custody may be imposed,[487] to prosecute whenever possible,[488] to suspend the case only under certain conditions[489] – preferably perpetrator treatment and/or a restraining order – and to intervene

487 If the suspect is caught in the act and there is a strong suspicion of culpability, the police arrest this person immediately. In other cases – if the criminal offence enables preventive custody and after permission of the public prosecutor – the police arrest the suspect as soon as possible. If preventive custody is not permitted, the suspect will be summoned to the police station.

488 All reports of domestic violence are immediately brought before an assistant public prosecutor. In principle, when the report results in a provable criminal offence, the suspect will be prosecuted. The public prosecutor sees to it that the case is brought before a court within six months after the suspension of the preventive custody. If the suspect does not qualify for perpetrator treatment, a more severe punishment (imprisonment or substantial community service) is indicated. A fine is undesirable, since that may hurt the victim as well and since no preventive effects are expected from it.

489 In cases that can be proven and that are of a relatively minor seriousness, a suspension of prosecution on certain conditions is possible; an unconditional suspension or an out-of-court settlement offered by the Public Prosecution Service are less advisable. If the suspect is detained, the public prosecutor will oppose a suspension of the preventive custody if a report on the options of perpetrator treatment by the aftercare and resettlement organisation is not (yet) available. Furthermore, if a suspension of the preventive custody is indicated, the public prosecutor will propose conditional suspension. Possible conditions could be the participation of the suspect in a form of perpetrator treatment or support by the aftercare and resettlement organisation. A restraining order is also an option. If the suspect has already begun a training course or treatment – or the suspect has shown a willingness to do so – a (partially) suspended sentence can be demanded with an operational period and under the condition of (further) participation in these projects or a restraining order.

consistently when conditions are violated.[490] The Domestic Violence Instruction is basically intended to foster an active attitude in the police and the Public Prosecution Service. There is not much latitude where their course of action is concerned. How the Instruction is adhered to in practice in stalking cases that fall under its scope and how police officers perceive stalking in general will be dealt with in the following sections.

7.3. The Modena report on stalking

As part of the Daphne programme to prevent and combat violence against children, young people, and women, the European Commission gave a grant to a research group – the Modena Group on Stalking (hereafter: MGS) – to take stock of the intervention models drawn up in the European Member States and to investigate to what extent the helping professionals in the European Member States recognised and appraised stalking.[491] In line with their assignment, the MGS conducted the first, and to date only, European cross-national comparison of perceptions of front-line police officers with regard to stalking and their recognition of stalking behaviour.[492] The study included Belgian, English, Italian, and Dutch police officers. With the help of hypothetical stalking situations ('vignettes') – twelve vignettes representing actual stalking scenarios and three control vignettes – the researchers tried to find out whether the police officers could distinguish a stalking from a non-stalking sequence of events, how they perceived the risk of violence in the various situations and whether they believed the scenarios warranted their professional intervention. The police officers, furthermore, had to indicate to what degree they felt that their current legal system assisted them in dealing with persistent unwanted attention and to what degree they felt that their training had equipped them to deal efficiently with these cases.

As regards general knowledge on and personal experience with stalking, the Dutch police officers scored relatively well in comparison to those of other countries. Of the 64 Dutch police officers who participated, 25% had had personal, direct or indirect experience with stalking cases, 100% had previous knowledge of stalking before completing the questionnaire, and 90.3% could correctly name the law that regulated stalking in the Netherlands.[493] When asked to indicate to what extent they felt that their training had equipped them to deal efficiently with stalking, the Dutch police officers even scored significantly higher than their Belgian or Italian colleagues.[494] In response to the question to what extent they felt the existing laws were helpful

490 If the suspect violates the conditions of the conditional suspension, the public prosecutor orders the arrest of the suspect (Art. 84 DCCP) and subsequently asks the court to revoke the suspension. If the suspect violates the conditions, the case will be brought before the court immediately, either for an intrinsic handling of the case (conditional suspension of prosecution) or the execution of the suspended part of the sentence.

491 Project no JAI/DAP//03/143/W 'Women victims of stalking and helping professionals: Recognition and intervention models'.

492 Modena Group on Stalking, 'Recognition and perceptions of stalking by police officers and general practitioners: A multi-centre European study', in: Modena Group on Stalking, *Female victims of stalking. Recognition and intervention models: A European study* Milan: FrancoAngeli 2005, pp. 82-110. The study also included general practitioners, but these results are not discussed here.

493 The last question was only filled out by 62 police officers.

494 The Dutch police officers scored 5.23 on a 7-point Likert scale.

in dealing effectively with stalking cases, the Dutch police graded the laws with a 4.78 on a scale from 1 ('not at all') to 7 ('very effectively').[495]

Just like the police officers from the other participating member states, the Dutch respondents appeared very sensitive in differentiating between stalking and non-stalking situations. The Dutch police officers generally evaluated the behaviour in the stalking vignettes as abnormal or illegal and they recognised it as a situation of stalking, especially when the vignettes contained recounts of more intrusive and more frequent stalking behaviour. In a subsequent article that was based on the MGS data, Kamphuis et al. found that Dutch police officers were, furthermore, the least inclined to agree with insensitive stalking-related attitudes, such as blaming the victim or seeing stalking merely as a nuisance rather than a crime.[496]

However, the Dutch police officers significantly diverged from their English colleagues when they had to assess whether the case should be dealt with by the police. Police officers in the Netherlands were significantly less likely to think it part of their job to deal with stalking incidents than police officers from England.[497] Another remarkable finding was that the stalking experience by a stranger was more easily recognised as stalking than stalking by an acquaintance or an ex-partner. Victims of strangers were also more likely to be referred to the police in comparison to other victims.

Although Dutch police officers were sensitive to the issue of stalking and were less inclined to trivialise the phenomenon, they were less likely than their English counterparts to take on responsibility in such cases and although they felt that they had received sufficient training to deal with stalking cases, they sometimes still held somewhat distorted views on the phenomenon. In contrast to studies in the real world, which showed that the majority of the stalking cases that are reported to the police involve ex-intimates or acquaintances rather than strangers, the behaviour was more likely to be seen as stalking if the stalker was a stranger. This misperception resulted in a tendency to refer victims of stranger stalking more easily to the police than other victims.[498] The researchers, therefore, concluded that 'there is a clear need for the construction of educational literature on stalking for (…) police officers in all the participating countries'.[499]

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495 In comparison, the Belgian police officers had a mean of 4.81, the Italians 3.70 and the English 4.78.

496 J.H. Kamphuis, G.M. Galeazzi, L. De Fazio, P.M.G. Emmelkamp, F. Farnham, A. Groenen, D. James & G. Vervaeke, 'Stalking. Perceptions and attitudes amongst helping professions. An EU cross-national comparison', *Clinical Psychology and Psychotherapy* (12) 2005, pp. 215-225.

497 On a 7-point Likert scale, the Dutch police officers scored a mean of 4.80 versus the 5.43 of the English police officers.

498 The surveyed police officers were not alone in this misconception. 168 undergraduate students who participated in another study also felt that police intervention was most necessary when the stalker was a stranger (L. Sheridan, R. Gillett, G.M. Davies, E. Blaauw & D. Patel, 'There's no smoke without fire: Are male ex-partners perceived as more 'entitled' to stalk than acquaintance or stranger stalkers?', *British Journal of Psychology* (94) 2003-1, pp. 87-98).

499 Modena Group on Stalking (2005), p. 109.

7.4. Interviews with public prosecutors and police officers

The outcomes of the Modena report correspond to a large extent with the problems that were raised by the victims in the questionnaire (Chapter 5) or the interviews (Chapter 6). They also had the feeling that the Dutch police were sometimes too reluctant to intervene, a reaction that is not surprising if the police officers indeed perceive stalking as a problem that, although abnormal and illegal, is not part of their job. Using interviews, seven Dutch criminal justice practitioners responded to these and other findings.

7.4.1. Method

The recruitment of people who were willing to give an interview happened on an *ad hoc* basis. There was no structured search for relevant public prosecutors or police officers, but contacts were established spontaneously in the course of the research project, for instance at conferences, during the execution of other projects, or through the mediation of others. For example, people who had shown an interest in stalking during previous interviews for a different project were asked if they would be willing to participate in a future interview. Interviews were either conducted face-to-face or by telephone. The possibility of telecommunicated interviews was intentionally left open, since that provided the prosecutors and police officers with the necessary flexibility to reschedule the interview whenever their professional activities so required. The interviews lasted for approximately 50 to 60 minutes and each interview was tape-recorded, this, of course, after obtaining the permission of the interviewee. In the end, seven practitioners were interviewed with a more or less equal division of people working for the Public Prosecution Service and people working for the police. The interviews took place in the period between 13 January and 2 November 2009. The people who participated were:

- Ms. Beatrijs van de Ven – Public prosecutor in Lelystad
- Ms. Pascalle Bruinen – Public prosecutor in Maastricht
- Mr. Roland Knobbout – Public prosecutor in The Hague
- Ms. Mariëtte Christophe – National Programme Director Domestic Violence
- Mr. Peter Rens – Vice squad in Tilburg (Midden-West Brabant region)
- Mr. Ed Mantel – Policeman on the beat in Drechterland
- Mr. Geert Theloosen – Teacher at the police academy Gelderland-Zuid and a member of the editorial board of *Politie Kennisnet*.[500]

With people working in the most southern part of the country (Maastricht) to those working in The Hague or even further up north (Lelystad and Drechterland), the participants were widely dispersed as to their place of work. However, given the small sample size, the results are only explorative and the opinions expressed by the respondents do not necessarily represent those of the organisations they work for. All the interviewees had shown a specific sensitivity for

500 Up to 2006, Geert Theloosen was also a policeman in the Nijmegen region. In this capacity, he came into contact with several victims of stalking as well.

stalking or other interpersonal violence victims' issues,[501] which may distort the generalisability of the findings even further, but which made them particularly useful for the aim of the interviews: to map all the problems that may arise during the investigation and prosecution of stalking and to discuss possible solutions.

The interviews were semi-structured, which meant that they were based on an interview protocol, but that there was room for sidelines if anything unexpected and interesting came up during the conversation. The protocol itself was divided into two parts: the first part was to find out how stalking was dealt with within the interviewee's organisation (e.g., is there a specific protocol?) and the second part inquired after the problems encountered on all possible levels (victims, police, Public Prosecution Service, courts, legislation). As regards the first part, two slightly different protocols were designed for the police and the Public Prosecution Service.[502] The reason for this was that certain questions were based on the Domestic Violence Instruction *(Aanwijzing Huiselijk Geweld)* which assigns different tasks to the two branches. The protocol inquired after all the obligations for the police and the PPS that derived out of the Domestic Violence Instruction. The idea of the second part was to first have the interviewees come up with problems at a certain level spontaneously. If they could not think of any problems, the interviewer confronted them with some of the most often heard complaints to see if they endorsed those. Sometimes, the participants expressed a wish to see the interview protocol before the actual interview took place in order not to come unprepared. Such a request was always met. The interviews were analysed by only one person, namely the author. She recognised certain themes or clusters of answers and these clusters formed the basis of the description. Given the limited number of respondents, it was possible to incorporate all their remarks in one way or another in the results section. Afterwards, appropriate quotes were selected in accordance with the established themes.

7.4.2. Results of part one: Approach to stalking cases

7.4.2.1. Policy and protocol on stalking

None of the respondents answered that their office had a special policy for stalking cases. Stalking was generally seen as a form of domestic violence and, as such, it generally resided under the auspices of the 'domestic violence' prosecutors or the 'domestic violence' officers. In some regions, the AWARE alarm system had been introduced, which had a strict protocol attached to it, but apart from the few cases that were actually assigned to the AWARE procedure, there was no specific policy on how to deal with stalking cases.

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501 Ms. Van de Ven and Ms. Bruinen are both specialised in domestic violence cases, Mr. Knobbout is the chairman of the Victim Information Point *(Slachtoffer Informatie Punt)* in the Hague, Mr. Rens was approached while he was attending a symposium on AWARE, Mr. Mantel had volunteered to help and advise the Stop Stalking Foundation *(Stichting Stop Stalking)*, and Mr. Theloosen specialises in teaching on stalking and domestic violence.

502 An English translation of both protocols can be found in Appendix 5.

Rumours about a detailed stalking protocol on the Police Knowledge Net *(Politie Kennisnet)*[503] turned out to be false. The National Programme Director on Domestic Violence thought that this informative database for the police contained a step-by-step approach to stalking, which could help individual police officers in building a case. In her opinion, 'police officers really need that protocol to know what they have to do'. In fact, during the interview, she referred no less than seven times to this protocol and its necessity in practice. However, an inquiry with one of the administrators of the Police Knowledge Net brought to light that there was no such thing as a stalking protocol on the Net. There was one in 2005, but it had been removed after it was found to be outdated. All that was left on the Net was general information on stalking such as a perpetrator profile and a step-by-step plan for victims. The administrator and his fellow editors were now in the process of drafting a new protocol, but this new protocol would probably take some time since recent developments such as the temporary restraining order *(huisverbod)* had been introduced and because the members of the editorial staff – all volunteers – could only meet once every three months.

Meanwhile, police officers on the straat were hard put to manage without a clear and concise protocol. In the absence of national instructions, a policeman on the beat had, with the help of some colleagues and a handful of public prosecutors, drafted his own protocol, which was soon to appear on the regional police website.

Of course, when stalking was perpetrated by ex-partners, family members or family friends, the protocol as set out in the Domestic Violence Instruction should be applied. Some of the prosecutors and police officers, however, indicated that certain requirements of the Domestic Violence Instruction were inappropriate for cases of stalking and the Instruction was therefore not followed to the letter.[504] The Vice Squad officer from Tilburg, furthermore, remarked that the Domestic Violence Instruction was nowhere near as detailed as the Investigation and Prosecution of Sexual Abuse Instruction *(Aanwijzing opsporing en vervolging inzake seksueel misbruik)*.[505]

7.4.2.2. Priority

According to the Domestic Violence Instruction, domestic violence and stalking by ex-partners, family members, and family friends should be 'prioritised'. The Instruction makes no mention of how this priority should work out in practice. It is unclear whether these cases should be processed more speedily at the expense of other cases, whether more manpower should be allocated or whether they should be investigated more thoroughly. Nevertheless, when asked whether stalking was prioritised in their region or office, the responses varied. Two

503 The Police Knowledge Net (own translation), which can be consulted by all police officers through an internal digital network *(Politie Intranet)*, is a national digital database which contains information on policing. It is aimed to professionalise the police.

504 See section 7.4.2.8.

505 Aanwijzing opsporing en vervolging inzake seksueel misbruik of 1 January 2009, *Staatscourant*, 2008, 253.

respondents said that there was no priority for stalking,[506] one said that even the less serious stalking cases were prioritised, and still others said that it depended on the particulars of the case. Domestic violence as such is prioritised and, as a consequence, stalking cases that are related to domestic violence are given special treatment as well. It is generally felt that domestic violence cases should not be 'lying around' for too long. But this special treatment does not extend to the level that stalking files are 'taken from the pile' and given priority over other cases. Stalking that is not linked to domestic violence is not prioritised at all.

7.4.2.3. Reporting stalking

Another requirement that stems from the Domestic Violence Instruction is that victims of (domestic violence) stalking should be stimulated to report. Two police officers said that victims were always stimulated to (eventually) report, although one made this conditional on the facts 'being worthwhile'. Often the report is preceded by an incident log *(mutaties)* and by file preparation first. One police officer said that it entirely depended on the case. He had a very pragmatic approach to stalking and if there were alternative ways to quickly end the harassment, for example, by means of a warning, then he thought a report was not always necessary. Yet he stipulated that the victim always retained the right to file a report. If, on the other hand, the victim did not want to file a report, even though he thought it sensible, then this officer would comply with the wishes of the victim, but he would still give these victims (general) advice on safety measures and he would offer them to keep an eye on the case. In the Midden-West Brabant region, some victims are also given advice on safety measures if the case so requires, and when a risk assessment shows that people are in danger of physical harm, there is even a possibility to get police protection; however, this had never happened so far. In all the regions victims are always told to keep a log detailing all incidents of stalking including date, time, and the particulars of any eye-witnesses. They are also always advised to collect evidence such as text messages, e-mails, and letters.

7.4.2.4. Call history

Research indicates that a large proportion of the stalking takes place through means of telecommunication such as (mobile) phones or the internet.[507] Stalkers call their victims against their will and send them unwanted text messages and unsolicited e-mails. The advantage is that these means of telecommunication leave behind a trail of evidence. Some of this evidence can (only) be collected by the victims themselves – for example, the content of text messages or e-mails – but other pieces of evidence are only retrievable by the police or the Public

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506 The National Programme Director on domestic violence even said that domestic violence as such had no priority at all. She also thought that stalking cases are given a lower priority than other cases. To the question of whether she felt that stalking should be given a higher priority, she answered: 'In cases of domestic violence it should. As for the other cases, I think that it is inconvenient for people, but that there are other resources that could be of help too.'

507 For example, an overwhelming 90.6% of the respondents to the Victim Support Questionnaire (Chapter 5) said that the stalker had contacted them by telephone and/or through the internet.

Prosecution Service. An efficient manner of checking the frequency with which the stalker called his or her victim is to ask the telephone company to submit the call history and caller ID. Not only do those lists contain every phone call that was made from the telephone of the stalker to the telephone of the victim – and this works irrespective of unlisted numbers – but it is also possible to ask for a list of the calls that were made the other way round.[508] In this way, it is easy for the investigators to establish the systematic fashion with which the stalker operates, but they can also check for possible 'counter-stalking' on the part of the victim. It may therefore be expected that, in cases of cyberstalking or in cases that have cyberstalking elements, call history or caller ID are regularly if not always requested from the providers.

In practice, however, there appears to be much difference as to what is customary as regards the requesting of call history and caller ID. On the level of the police, some say that this happens 'in principle', others only consider this when the other pieces of evidence are not sufficient, but all but one agree that requesting call history is either expensive or labour intense. The one dissenting opinion came from a former police officer in Nijmegen, who now works for the police academy. He had heard from colleagues that requesting call histories is a relatively simple job nowadays that does not take up much time at all. In Lelystad, a recent development within the Public Prosecution Service is to have the telephone companies print these lists almost as standard procedure. The local public prosecutor even prefers to have those lists available before she examines the suspect for the first time. In this way, she can immediately confront him with the evidence. In Maastricht, the instructions for the prosecutor's clerks are more or less the same, but in The Hague this method is reserved for serious stalking cases only. There, 'a lot is expected of the victim' as regards the collection of evidence. The public prosecutor is furthermore of the opinion that 'the victim can also send a warning letter through the provider or can buy a new cell phone'.

7.4.2.5. Registration by the police

In accordance with foreign literature and with complaints from the Victim Support Questionnaire, all respondents admit that the police sometimes make mistakes when it comes to the correct registration of stalking cases. Two types of problems can be distinguished: (1) Stalking is not recognised as such and, as a consequence, police officers register an incident under a different provision, e.g., intimidation (Art. 285 DCC). In the Midden-West Brabant region, for example, there had been some official complaints due to the fact that several stalking cases were split up in this manner. Next to ignorance of the police, some respondents also attribute this to the fact that the victims who come to the police station are vague: 'If someone enters and says 'I'm being stalked', that is clear, but if someone says 'I'm being harassed', then it could be registered under a different code.' (2) Police officers sometimes forget to take down an official complaint or when the indictment contains two stalking episodes, they register one complaint, but forget to

508 According to the policeman on the beat, this does become more complicated when the stalker has a pre-paid telephone. If this is the case, the policeman will send a text message to the telephone or an e-mail to the sender with the request to stop this behaviour and to contact the police. In his experience, this has always ended the cyberstalking.

take down a complaint for the second period. Since an official complaint by the victim is one of the constituent elements of Article 285b DCC, the absence of such a complaint will technically result in the prosecution being barred. Still, the respondents did not think this a significant problem. When the omission was discovered in time, there was still a possibility to take down a complaint. If it was too late for that, then the intention of the victim was often construed afterwards by the courts by liberally interpreting the text of the report. An absent complaint almost never caused the prosecution to be barred, something that was also implied by the case review in Chapter 4. In addition, the public prosecutors from Maastricht and Lelystad remarked that, in their opinion, things had improved lately with the police being more alert to these matters.

7.4.2.6. One contact person

The interviews with victims revealed that victims themselves think they would have benefited from having one contact person within the police, for this would have prevented them from having to tell the same story over and over again. Furthermore, they expected that one contact person would have been more understanding of their misery and that this person would have been more aware of the stalking history that had passed between the stalker and the victim. If someone is solely assigned to the case, then this person knows not only about past agreements, but also about *violations* of those agreements and, as a consequence, he or she would probably be more inclined to intervene at an earlier stage.

Despite these obvious advantages, it is not common practice to link one single person exclusively to a case. In the Midden-West Brabant region, concerted efforts are made to assign one contact person to each case. However, this respondent admitted that also in the Midden-West Brabant region, in reality, things are not that straightforward. A possible reason for this is that people work in shifts and that the attrition rate within the police is rather high, with people joining other forces. Furthermore, some police officers are more dedicated than others, with the more dedicated ones being more inclined to 'stick to a case'. The former police officer in Nijmegen answered that, in his region, he had established the practice of a group of officers sharing a case, all of them being aware of the particulars of a case. The victim had the names of all the officers involved and could contact any one of them without having to reproduce the story from the beginning. The policeman on the beat from Hoorn served as a contact person for several stalking victims: 'If I'm attached to a case and if I have given my business card, then I want to know everything. I will not think: 'There she is again.' That's not the way I work. I want to know everything. In a case like that, I give my e-mail address to victims and tell them to report everything to me.'

7.4.2.7. Contacting the stalker

A study by Tjaden & Thoennes showed that the stalking often ended through alternative channels than the criminal justice system, and if the police and the judiciary were effective, this effectiveness was mainly attributed to informal reactions, such as warning the stalker.[509] From a preventive point of view, it may therefore be a good idea for the police to contact the stalker at an early stage. Still, only two officers contacted the stalker with the intention to inform him or her of the suspicion and to advise the stalker against future contacts with the victim. In their experience, stalkers often backed down after such a conversation. Only in the case of violent stalking or if the stalker had a serious criminal record, one respondent immediately resorted to filing a report without talking to the alleged stalker first. Contacting the stalker had another advantage in that a continuation of the stalking after this formal warning could serve as evidence of the systematic nature of the harassment. The other two police officers indicated that, after a certain interval, the stalker is invited to come to the police station, but only after a preliminary investigation and mainly with an eye to evidence collection.

7.4.2.8. Automatic report to the Public Prosecution Service

In instances of stalking that are related to domestic violence, the Domestic Violence Instruction prescribes that the case should immediately be sent to an assistant public prosecutor after the victim has reported the stalking. This means that the police are not allowed to make their own assessment of whether a case is worth prosecuting or not. In other words, there should be no pre-selection of cases. This rule is not adhered to in practice. Just as in other cases, the police still check if there is sufficient evidence to start an investigation, before they send a case off to the public prosecutor's office. According to the National Programme Director on Domestic Violence, aspects such as the anticipated amount of work and the feasibility of obtaining sufficient evidence can also play a role in this case-screening process.

7.4.2.9. Arrest and detention on remand

One of the advantages of Article 285b DCC is that it enables the arrest of a perpetrator and his or her placement in pre-trial detention or detention on remand. This allows for practitioners to respond immediately to a (serious) violation of someone's privacy. The Domestic Violence

509 Nine percent of the victims who were no longer stalked said that the arrest of the stalker had ended the harassment, whereas 15% thought that a warning by the police had done the trick (P. Tjaden & N. Thoennes, *Stalking in America: Findings from the Violence Against Women Survey*, Washington D.C.: U.S. Department of Justice, National Institute of Justice 1998, p. 12).

Instruction prescribes that, when there are 'grounds' and 'serious grievances',[510] then the suspect should always be brought before an examining magistrate, who decides on detention on remand. The public prosecutors interviewed were unanimous in that they would always bring a suspect before an examining magistrate if there were grounds and serious grievances, but that this is not unique for stalking cases and that 'grounds' and 'serious grievances' are high thresholds in themselves. Given the repetitive nature of the conduct, the ground of risk of recidivism (Article 67a DCCP) is probably relatively easy to establish in stalking cases, but the prosecutors indicate that the serious grievances are not self-evident in each case.

After a suspect has been brought before an examining magistrate, the general impression is that the examining magistrate will usually, in conformity to the demand of the public prosecutors, order preventive custody, but that this order is immediately followed by a suspension of the pre-trial detention, especially if the stalker is a *first offender*. The public prosecutors are not demotivated by this, since their primary goal often is to procure the conditions that are attached to a suspension of the custody rather than the preventive custody itself. A restraining order is at least aimed for, but sometimes the prosecutors ask for a report or supervision by the probation and aftercare service *(reclassering)* as well.

If a suspect has demonstrably violated the conditions the examining magistrate not always terminates the suspension. Sometimes, the violations are considered not serious enough to warrant a termination and instead the conditions are more clearly demarcated. In The Hague, however, there is a tendency to order the violating suspect back into custody.

When a case is not qualified for detention on remand – there are no grounds or serious grievances – then the Domestic Violence Instruction decrees that, whenever possible, the suspect is given a summons to appear before the police court *(politierechter)* or a trial in which the Public Prosecution Service can decide on a community punishment order and/or a fine *(TOM-zitting)* that will take place within three months. These so-called accelerated proceedings *(snelrecht)* entail that the suspect is arrested or summoned to the police station,

510 Next to stalking being a crime in which pre-trial detention may be applied (Article 67 (1b) DCCP), there are another two statutory requirements for pre-trial detention. The first requirement deals with the 'grounds' on which pre-trial detention may be based. Article 67a of the DCCP enumerates these grounds. According to this article, 'there has to be a danger that the suspect will abscond or will pose a serious danger to public safety. A serious danger to public safety exists: a) if the offence carries a maximum statutory sentence of at least twelve years imprisonment and public order has been seriously affected by the offence; b) if there is a serious risk that the offender will commit a crime that carries a maximum statutory sentence of not less than six years imprisonment; or which may jeopardise the safety of the state or the health or safety of persons; or create a general danger to property; c) if there is a serious suspicion that the offender has committed designated offences such as property offences, threat, embezzlement or money laundering and will reoffend, and less than five years have passed since he was sentenced to a deprivation or restriction of liberty or a community service order; or d) if it is necessary to detain the offender in order to establish the truth by methods other than through his own statement' (P.J.P. Tak, *The Dutch criminal justice system*, Nijmegen: Wolf Legal Publishers 2008, p. 94). A second requirement is that there have to be 'serious grievances' (Article 67 paragraph 3 DCCP), which means that there has to be a serious suspicion against the suspect. A mere suspicion, e.g., on the basis of an anonymous tip, is not enough. This evidence needs to be corroborated by, for example, a witness statement or a confession (G.J.M. Corstens, *Het Nederlands strafprocesrecht*, Arnhem: Kluwer 2005, p. 386).

where a summons is presented to him or her on the spot or, at least, as soon as possible.[511] The underlying idea is that it accelerates the procedure and that suspects are immediately confronted with the consequences of their actions.[512] On this point, the public prosecutors disagree. One indicates that the policy in The Hague is to hand out as many summonses as possible in this fashion, whereas the other two find the accelerated procedure 'extremely inappropriate' for the often complex cases of stalking, where there has hardly been any time for fact-finding investigation.

7.4.2.10. Prosecution

In line with the Domestic Violence Instruction, the public prosecutors in principle always prosecute whenever the facts amount to a criminal offence. One exception is when the victim him- or herself shows too much provocative behaviour. During the prosecution, an unconditional dismissal and an out-of-court settlement *(transactie)* are generally avoided. Only one prosecutor indicated that in less serious stalking cases, an out-of-court settlement is sometimes still used. He stated that there is a gradual increase from a conversation, to an out-of-court settlement, to an arrest, to (suspended) preventive custody, and so on, unless the incidents are serious enough to warrant an immediate detention on remand.

The penalties that the public Procurators Generally demand are a community service sentence combined with a suspended prison sentence. Depending on the report of the aftercare and resettlement organisation, they also consider supervision by this organisation or treatment. If the stalking has been excessive, if it has been going on for a very long period of time with an enormous impact on the victim, or if someone continues to reoffend, then an unconditional prison sentence is the obvious choice. The public prosecutors often consider asking for a restraining order. For one prosecutor, this choice depends on whether the victim was recently harassed. If there was an extended period of tranquillity between the indictment and the trial, then a restraining order will not only restrict the accused in his or her liberty of movement, but it could also trigger the stalker into commencing the harassment again. Another prosecutor refrains from asking for a restraining order if the stalker and the victim have children together or if there is already a civil restraining order in place. The third prosecutor even considers a restraining order to be 'overkill'. Often an operational period of two years is attached and, in his opinion, it is hard to check whether the stalker violates the restraining order, since the victims themselves have a tendency to initiate contact too, especially if perpetrator and victim have children together. In his experience, the courts are also hesitant to impose a restraining order in this final stage of a criminal justice procedure.

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511 S. van der Aa, B. van der Vorm, A. Pemberton, J. van Kesteren & R. Letschert, *Evaluatie van de strafvorderingsrichtlijn kwalificerende slachtoffers*, Tilburg: Intervict 2008, p. 92.

512 See the website of the Dutch Public Prosecution Service <http://www.om.nl> and click *snelrecht*.

7.4.2.11. Information

Ever since victims' rights have been on the political agenda, a constant point of attention has been the timely and correct notification of the victim of certain important developments in his or her case, such as the release of the suspect from preventive custody, the dismissal of the case, or the time and date of the trial. This right to information is considered so important that it has even been formalised in several national and international protocols and directives.[513] The interviewees all underline that the victim should be kept informed of the progress of the case, but some have doubts as to whether this actually always happens in practice. Some respondents explicitly express their concern, particularly when the case is transferred from the police to the Public Prosecution Service. In principle, this task is assigned to the Public Prosecution Service's victim care department, but sometimes things go wrong nevertheless. In The Hague, therefore, a project was started called the Victim Information Point *(Slachtoffer Informatie Punt)*, which was also specifically designed to overcome the problems with keeping the victims informed.[514] By the end of 2010, the Victim Information Point is expected to be implemented at all the public prosecution offices throughout the country.

7.4.2.12. Training

Even though many of the respondents indicate that Article 285b DCC is a difficult provision that demands a great deal from the investigators and the Public Prosecution Service, at this moment there is no special training available for the practitioners. Public prosecutors and their clerks receive no special training, but they regularly consult their colleagues on the topic or they have regular meetings in which they discuss the cases at hand. These meetings in combination with the information that is conveyed to them through specialist journals like *Opportuun* or during generic domestic violence courses led the interviewed prosecutors to believe that they are not in need of additional training. Furthermore, within the prosecutor's offices, there is often somebody who specialises in domestic violence and related issues. As for the police, dealing with stalking is nowadays incorporated into the general training at the police academy, but only as one of the many violent offences and only within a very limited timeframe. The teacher at the police academy estimated that in total only two hours of the entire course are devoted to stalking on average. In his opinion, this was far too little for such a complex crime. After police officers have left the academy, there are very few possibilities for further study on

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513 For examples on an international level, see Article 6 paragraph a of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Res. 40/34 of 29 November 1985; Article 6 of the Council of Europe Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure (No. R (85)11), adopted on 28 June 1985; Article 4 of the European Union Framework Decision on the Standing of Victims in Criminal Proceedings (2001/220/JHA), 15 March 2001; and Article 6 of the Council of Europe Recommendation on Assistance to Crime Victims (Rec (2006)8), adopted on 14 June 2006. On a national level, the Victim Care Instruction *(Aanwijzing Slachtofferzorg)* of the Board of Procurators General mentions the provision of information to the victims as one of the three basic rights (Aanwijzing Slachtofferzorg of 1 June 2004, *Staatscourant*, 2004, 80.

514 The Victim Information Point works like a one-stop shop, which crime victims and the bereaved can turn to with all their questions and requests for help (*Slachtoffer Informatie Punt Den Haag. Jaarverslag 2008*, p. 4).

the topic. Stalking is often dealt with during the incidental courses on domestic violence, but these courses are not compulsory for all the officers – only some officers receive an invitation to participate in the course – and stalking has to compete again with other crimes for the limited time available. Stalking is also on occasions brought up as an example during the general proficiency courses.

7.4.2.13. Distinction between different stalkers

Stalkers can roughly be divided into three groups: ex-partners, acquaintances/family/friends, and strangers. Responses varied to the question of whether these cases were treated differently. The teacher at the police academy and the National Programme Director on Domestic Violence have the feeling that ex-intimate stalker cases are given a higher priority than other cases. The Programme Director furthermore thinks that if the harassment is executed by an anonymous stalker, the case is not even investigated, unless the letters that are sent 'contain anthrax or when it is a letter bomb'. In cases of stalking between acquaintances, family or friends victims are equally left to their own resources. The public prosecutor from The Hague accords cases between ex-lovers higher priority. In his opinion, the closer the perpetrator is to the victim, the scarier the harassment becomes and the more police and judicial involvement is justified. The other interviewees, on the other hand, do not make this distinction, but judge cases on the type and frequency of incidents that occurred, regardless of the type of stalker that commits the criminal act. However, some do indicate that cases that involve anonymous stalkers by necessity require a different approach from an evidentiary point of view: you will have to identify the stalker first.

7.4.3. Results of Part Two: Problems with stalking cases

7.4.3.1. Problems on the level of the victim

The two most striking problems on the level of the victim are: initiating contact or reacting (too often) to the stalker's approaches and inaccurate evidence collection. These acts are mentioned by all the respondents and each of them indicates that they have had ample experience with both problems.

In principle, the respondents understand the fact that many people may still engage in conversations with their stalker. They reckon that victims are put under so much pressure, that eventually they cave in and agree to one final meeting in the hope that this will satisfy their stalker and put an end to the harassment. Victims are unaware of the fact that stalkers interpret these meetings quite differently and, instead, gain hope from them.

The respondents are equally understanding of the desire to react to hurtful phone calls or e-mails with an angry response and some of them indicate that a couple of impassioned reactions are not problematic. It does become a problem, however, when the contact amounts to 'two-sided social intercourse'. In that case, proving to the courts that the contact was unwanted becomes difficult. What makes things even worse is not to inform the police of the victim's own role in the matter or to blow matters out of proportion. Once the police find out

about this, the report becomes weaker and the police may lose their motivation to investigate the matter diligently. Some of the respondents are unforgiving:

> Inconsistent behaviour, not living up to agreements, stretching the truth, not revealing their own role … Once the police find out about that, then the victim's credit will disappear soon after. For then it is just work for the sake of it and the police don't want to have anything to do with that.

In vice cases, victims are always explicitly questioned about their own behaviour in the matter and they are informed about the adverse consequences if anything unsuspected turns up during the investigation. The vice officer did not think this was always meticulously done in stalking cases. Nevertheless, it seems advisable for victims not to contact the stalker on more than one occasion – to indicate clearly and decently that further contact is unwanted – and to always come forward and confess what has happened if they have reacted incidentally to the stalker's provocations.

As to the collection of evidence, the respondents noted that victims often throw away vital pieces of evidence (letters, e-mails, text messages) and that they are not careful in writing down every incident in a log. If the stalking lasts longer than a couple of weeks, remembering the details of each incident becomes impossible and eye-witnesses tend to forget things too. Respondents noted that the evidence collection by the victims became more structured once victims had come to the police for the first time and that they keep track of most things that happened, but even then an immense difference between the one victim and the next could be observed.

Other problems that the respondents had come across were the inconsistency of victims in the sense that (often foreign) victims withdrew their complaints,[515] that some victims were unstable and suffered from psychological disorders, that some victims blamed themselves, that victims came to the police too soon without actively looking for alternative solutions (e.g., mediation),[516] that having a child together with the stalker complicated matters further and that out of frustration victims sometimes behaved rudely towards the police officer in charge. One policeman stated that, although police officers are especially trained to deal with frustrated persons, 'the willingness to have a quiet talk with that man or woman does not increase when somebody is yelling in front of your desk.'

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515 This problem was observed by the public prosecutor from The Hague only. Another prosecutor, however, had quite the opposite experience. She said that a withdrawal happened quite regularly in domestic violence cases, but that stalking victims very rarely withdrew their complaints.

516 Especially the National Programme Director on Domestic Violence and the public prosecutor from The Hague stress the importance of alternative means of conflict resolution. The latter even says that victims of (less serious) stalking cases should try these alternatives first.

7.4.3.2. Problems on the level of the police

At police level, there are again two striking problems. The first has to do with the police attitude towards stalking and the other with a lack of capacity. Although the general impression is that stalking is taken much more seriously nowadays, the majority of the respondents can easily imagine that there are still police officers who do not fully appreciate the gravity of the issue. Especially less serious cases or cases in which the harmfulness of the behaviour is not self-evident are in danger of being overlooked and certain police officers even blame the victims. The result of this attitude is that these officers do not take an active interest in stalking cases and even send victims home without taking down a notification of the incident. Some of the respondents attribute this negative attitude to the behaviour of the victims themselves. Victims who make false accusations, who exaggerate, who equally engage in harassing behaviour or who violate agreements spoil it for the other, truly committed victims. Moreover, a history of domestic violence between stalker and victim, during which the police had to intervene on a regular basis, may colour their opinion:

> The police are the agency that has to actually turn out for this constantly. It's easy for us, of course. We stay here behind our desks. But the patrols, they have to come to the same address constantly and upon arrival they find a woman who says: 'There's nothing the matter, just go, because nothing has happened'. This can imply of course, that … they are just like normal people, police officers … that between them the feeling arises of 'What are we doing this for?' Naturally, the police know that they have to suppress this feeling and I think that they want to, but that sometimes they still have the idea that people will come together again and that the problem will continue. This can play a role in the background of why victims, when they come to the station, get the idea that they are not being taken seriously.

Another reason why the police may not always take a stalking case seriously is the natural inclination of some police officers to feel less strongly about issues of interpersonal violence than others:

> There are police officers who are very much involved in domestic violence [and stalking], and those who aren't. One person has it more readily in his mindset than the other, so if you're lucky – and this may seem a little arbitrary – that you have come across a police officer who says: 'I'm going to make every effort and I won't let go and you can always call me whenever he's around, then I'll make a note'… If you manage to establish such a personal bond with an individual police officer, and he or she is allowed by his or her boss to do so, because there is capacity, then you have a chance of making the case successful.

This last quotation simultaneously introduces the second reason for concern on the level of the police, namely the lack of capacity. Over the last few years, the police have been assigned extra tasks that were not matched with an equal increase in personnel. These additional tasks, together with the – at least perceived – time-consuming character of stalking cases and the fact that the police are assessed on the basis of finished cases only (e.g. because of performance

contracts), have negative consequences for successful intervention in or investigation of stalking cases.

Problems already arise when stalking victims come to the police station for the first time. Where victims of vice crimes are allowed to tell their story over several days if the case so requires, the intake of stalking victims lasts one or two hours maximum.[517] Even if the victim is an extremely skilled storyteller, certain important details or events are bound to be lost, the more when the stalking has been going on for a longer period of time. The teacher at the police academy noted that, as a result, the reports are often chaotic and flawed. He recommends having an intake first, during which the victim can tell the complete story, followed by the actual report. When he was still on duty, his experience was that this way of working generated better reports, which in the end saved time. Still he was reprimanded by his superiors for spending too much time on stalking victims.

A second hurdle is for the police to act upon a report. With other, possibly more straightforward cases competing for attention, stalking, which – rightfully or not – has the name of being time-consuming, is more easily put aside than other cases in order to be able to complete as many files as possible within a limited time frame and with a limited capacity. One respondent puts it like this:

> If I, as a police organisation, have to do 50 cases in one week and these cases are shelved, and we are not allowed to have shelved cases, then I will assess which cases have the most potential. That may not be nice, but it is a given fact.

This thought process is only amplified by the fact that police officers are only assessed on the basis of finalised cases. To the question of whether it could be effective to warn the stalker in an early stage, one respondent answered that 'this may be better, but the police are judged on completed cases, therefore simply giving out a warning is not stimulated.'

A third problem that may be related to the capacity issue is that sometimes the police are guilty of poor evidence collection themselves. There are examples of police officers who forgot to mention in their report of findings that they read through the (text) messages that were sent to the victim or forgot to insert a copy of the actual text of these messages. They likewise neglected to find out whose number the messages were sent from or whose e-mail address the e-mails come from. In the opinion of the public prosecutor from Maastricht, much more attention should be paid to establishing that the phone calls or the text messages indeed derive from the suspect. She, furthermore, thinks that the police often omit to actively ask the Public Prosecution Service for call history or caller-ID.

Some final, more miscellaneous problems were the perception that, when the police do take on stalking cases, they proceed too slowly, that they do not ask the public prosecutor for advice, and that the police sustain a 'culture of grumbling': things that go wrong, such as a false accusation or a dismissal, are highlighted, whereas little attention is paid to cases that did go well. For motivational purposes, this respondent thought it would be a good idea to place more emphasis on the cases successful cases.

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517 In Nijmegen, the standard time for taking down a report is 45 minutes.

7.4.3.3. Problems on the level of the Public Prosecution Service

The interviewed public prosecutors were unanimous in the assessment of what, in their view, was one of the biggest problems of the Public Prosecution Service's approach to stalking cases: there is a lack of capacity. They have to perform under huge pressure with many cases for only a few employees. This has its effect on all the cases, including stalking. One public prosecutor stated the following:

> There are many, many cases and you try to finish as many as possible, as soon as possible, but I think that the average processing time approximates a year and even that is quick. For those people [stalking victims], it is a long time.

Her solution to this problem was to try to obtain a (suspended) detention on remand from the examining magistrate whenever that was possible. If the detention on remand is suspended under the condition that the stalker does not contact the victim, then a case may still take a year to appear before a court, but on violation of the conditions, the stalker can be arrested and detained. That is a more quick and effective response.

The interviewees who worked for the police agreed with the view that stalking cases generally take too long to be processed by the Public Prosecution Service. One respondent had the idea that the police had to meet all sorts of deadlines, but that the Public Prosecution Service does not set deadlines for itself. However, instead of blaming the excessive workload, these respondents generally associated the long processing time of stalking cases with a disproportionate desire to make the evidence watertight, sometimes much to the frustration of the police:

> Sometimes you see things go wrong, but you still need to keep investigating matters or to wait until something happens again.

One public prosecutor indeed said that she refuses to go to trial if she knows that certain aspects can still be investigated. In the opinion of the police officers, the prosecutors should sometimes take a chance and try to pursue a case that is not iron-clad. Some had the feeling that prosecutors were afraid to do this, because of the fear of an acquittal and the possible consequences this may have for their career:

> The culture of the public prosecutors is: it is okay if a judge does not follow you on one occasion, but if this happens twice, then you've had it, you know.

The vice officer had the feeling that this fear had only increased over the past few years, probably because recently the courts had blown the whistle on the Public Prosecution Service

on several occasions.[518] One public prosecutor admitted that, since prosecutors' performance is assessed on the basis of the percentage of acquittals, this is always a point of consideration. Yet, he thought that only the young, inexperienced prosecutors would shy away from taking a chance now and then. The two other prosecutors were not of the opinion that cases were subjected to strict selection criteria. On the contrary, cases in which only the evidentiary minimum could be established were still prosecuted, because the phenomenon was considered too serious to dismiss.

Finally, one prosecutor said that some colleagues should be more precise in their formulation of the indictment[519] and another said that some stalking cases are trivialised; that sometimes prosecutors take a businesslike approach and lose sight of the subjective nature of the behaviour; that prosecutors should make more effort to give victims arole in the trial; that the Public Prosecution Service should be more sensitive to the psychological or alcohol or drug-related problems of some victims; and that if a victim does not cooperate, the case is closed too easily without looking into the victim's motives for refusing to cooperate.

7.4.3.4. Problems on the level of the courts

On the level of the courts, a grievance voiced by two public prosecutors (Maastricht and Lelystad) was that not enough time is allocated to accommodate the numerous domestic violence and stalking cases. There is a limited trial capacity and, as a result, cases have to wait before they can be brought before a court of law. Very serious cases can sometimes take precedence over other cases, but this is not in the hands of the public prosecutors. As a rule, cases in which the suspect is remanded in custody take precedence over cases in which the suspect is set free again. Since (in comparison to other European member states) the Netherlands has many pre-trial prisoners,[520] this is disadvantageous for cases of stalking in which the suspect is generally released from custody. The public prosecutor from The Hague complained about the capacity of the courts as well, but for him, this lack of capacity manifested itself in the limited time available for the victims during the trial.

With respect to the substantive handling of cases, the public prosecutors were not invariably

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518 For example, the release of two convicts in the *Puttense* homicide case. The two men were initially sentenced to 10 years imprisonment for the rape and murder of 23-year-old Christel Ambrosius, based on dubious witness statements, and despite the fact that the sperm found on the body of the victim did not match their DNA. After having served two-thirds of their sentence, the Supreme Court decided that the trial had to be reopened and eventually they were acquitted.

519 Many officers make the indictment all-encompassing. If the stalking consists of two periods of intense harassment separated by a hiatus – a period of relative calm – then it is advisable to indict those two periods, instead of one long period that includes the hiatus. The shorter the indicted period and the more intense the harassment, the likelier it is to establish the systematic fashion of the stalking. Another advantage is that an acquittal for one period of stalking (e.g., because, in that period, the victim has contacted the stalker him- or herself) does not automatically mean an acquittal for the other period. The few threats that were uttered during the 'hiatus' can be indicted separately.

520 The rate of pre-trial prisoners per 100,000 inhabitants in the Netherlands comes second after Italy when calculations are based on the SPACE definition, and fourth after Italy, Luxembourg, and Belgium when calculations are based on the ICPS World Prison Brief (A.M. van Kalmthout, M.M. Knapen & C. Morgenstern (eds.), *Pre-trial detention in the European Union*, Nijmegen: Wolf Legal Publishers 2009, p. 33).

satisfied either. One prosecutor thought that the courts were sometimes too hesitant to convict a person of stalking. The main reason for this was that the intrusiveness of certain behaviour was questioned or that courts were of the opinion that the nuisance caused by the harassment could have been avoided by alternative solutions:

> 'Is an e-mail intrusive?' they ask you. Well, if you constantly receive e-mails in your mailbox, then, in my opinion, that is intrusive, but that is a discussion in which they can argue 'You can block your e-mail or you can take on another e-mail address.' I think that you then force somebody to do something and that is precisely what [the provision against] stalking is meant for: to avoid that.

She furthermore had the impression that the courts' expectations of the victims were too high. Contact from the part of the victim was not easily forgiven and another prosecutor also said that the main reason for acquittal lay in the contact on the initiative of the victim. Finally, all but one prosecutor felt that the courts sometimes imposed too lenient penalties.

7.4.3.5. Problems on the level of the legislation

Many respondents wanted to emphasise that they were very pleased with the introduction of Article 285b DCC. It provided them with better possibilities to counter repetitive harassment than before the criminalisation of stalking. Although they generally evaluate the provision as fairly 'workable', they do find Article 285b DCC demanding when it comes to the furnishing of proof, especially where the systematic fashion is concerned. Remarks such as 'from an evidence point of view, it is not always easy', 'the legislation requires an incredible amount of evidence to prove the systematic fashion' and '[the systematic fashion] is one of the most troublesome features of the Article' came up regularly.[521]

For some, another point of concern was the principle of *ne bis in idem*, otherwise known as double jeopardy. In the course of one stalking sequence, other criminal acts may take place as part of the harassment. Next to more innocuous behaviour, a stalker could, for example, violate the provision against intimidation (Article 285 DCC) or he could be guilty of simple assault (Article 300 DCC). The question then is: Should you prosecute those single incidents on the spot or should you save them up to strengthen the stalking case? If you prosecute single incidents separately, the principle of double jeopardy could potentially prevent these incidents from being used again in a subsequent stalking charge.[522]

The three prosecutors all had very different ways of dealing with this issue. For one it was inconceivable to postpone prosecution once a criminal act had been established, for he found the quick response and the termination of the stalking more important than the successful

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521 The one exception was the policeman on the beat, who did not find it hard to establish the systematic fashion. One public prosecutor remarked that 'according to case law, each element needs to be proven on the basis of more than a single declaration, but due to the lapse of time, it is difficult in general to find corroborating evidence.' In Chapter 8, it will be shown why it is a misunderstanding that each element has to be covered by more than one piece of evidence.

522 Whether this is actually true will be elaborated on in Chapter 8.

prosecution of stalking as such. Especially in cases of stalking, it is important to intervene when possible. At the other end of the spectrum was a prosecutor who preferred to wait and collect each incident that was related to stalking in order to present the courts with as complete a picture as possibl. She would then present the other provisions as an alternative charge. The third prosecutor indicated that for her it was a recurring consideration in each stalking case. Sometimes she summoned a perpetrator as soon as possible, at other times she waited to continue building the stalking case.

7.4.3.6. Biggest problem

To the question which of the aforementioned issues formed the biggest problem, the answers varied. Three respondents indicated that, in their opinion, evidence collection was most problematic. A large part of the burden of proof is on the victims and Article 285b DCC is generally understood to require much evidence. Evidence collection is furthermore complicated through the lapse of time that passes between the moment that the stalking begins and the moment that the case arrives at the police station or the public prosecutor's office. The other respondents were more disturbed by the ignorance of both the police and the victims, by the lack of a more profound training or specialised education of police officers, by the many demands that the victims have to meet or the lack of capacity and priority.

7.4.3.7. Most effective reaction

The respondents largely agree when it comes to their idea of the most effective reaction of the police and the criminal prosecution service to stalking: each of them emphasise that it is important to intervene as soon as possible. Some place this in the context of quick intervention through the mobilisation of police officers on the beat, others prefer to warn the stalker at an early stage, and still others recommend immediately bringing the stalker before an examining magistrate to obtain a (suspended) detention on remand with a quick and effective response if the stalker violates the conditions. What is remarkable is that each of them prefers to deal severely with the stalker at once, instead of placing their trust in a completed criminal justice procedure:

> The police as a governmental agency [which] has to maintain order and justice and often are held in high regard, should do much more in those matters than they do now. Now we are still very reactive. Like something happens and then we come. I think that we should try to get to the front. If we can prevent something, from escalating for example, then that is more useful than waiting until the case is completely finished and perhaps brought before a court.

The respondents are also similar in their assessment of the reaction that could make matters worse. They feel that inconsistent behaviour, of both the criminal justice practitioners and the victims, is a factor that could deteriorate the stalking. In the case of the practitioners, giving the impression that the stalking is negotiable, hearing the suspect over and over again, and not reacting to the violation of past agreements (e.g., not revoking the suspended preventive

custody on violation of the conditions) will lead the stalker to believe that he or she is invulnerable and perhaps even that the police condone the behaviour. Repetitive questioning without penal consequences will only lead to frustration on the part of the stalker and can cause him to take up the harassment again. On the part of the victims, giving in to the stalker to one final meeting is greatly discouraged. These meetings seldom have the desired effect and stalkers only derive hope from them instead.

7.4.3.8. Possible solutions or advice for improvement

The question of how the treatment of stalking by the police and the criminal justice system could be improved, inspired the respondents to some very creative solutions, ranging from the – highly objectionable – reversal of the burden of proof (the stalker should be the one to prove why he was at a certain place at a certain time when the victim happened to be there), to the implementation of 'stalking buddies',[523] or to increasing the maximum penalty to four years imprisonment instead of three. In the opinion of the public prosecutor who proposed the latter solution, this modification would not only express that the legislator considers the behaviour worthy of punishment, but it would also be in line with the usual protocol for other crimes (e.g., as regards preventive custody) and, as a consequence, public prosecutors would take the problem more seriously.

A less far-reaching and therefore probably more feasible suggestion was to put the topic on the agenda of 'partnership approaches', such as the *Veiligheidshuizen* or the *ketenpartners*[524] who already meet regularly in response to domestic violence issues. A great advantage is that the police receive immediate feedback from the Public Prosecution Service on the prosecutorial difficulties of a certain case and can respond accordingly. Furthermore, possible psychological problems of the stalker can be dealt with more quickly since the mental health organisations often take part in these meetings. The respondents who proposed this solution, however, seemed of the opinion that this measure should be reserved for serious stalking cases that take place within the domestic violence context.

Another tendency was to appeal to the ability of victims to deal with the stalking themselves or to look for alternatives outside the criminal justice system. The National Programme Director on Domestic Violence would like to make victims of less serious stalking enthusiastic about alternative solutions and not to rely too much on the authorities. With the same idea in mind, the public prosecutor from The Hague stressed that the Victim Information Point could play a vital role in informing victims on how to stop the harassment themselves. Mediation was mentioned as well as a promising but, to date, largely unexplored option to counter stalking.

Some final propositions were related to the education and training of the police. The interviewed policeman on the beat thought that the police could benefit from more education and information on the topic. In his experience, stalking was not difficult to cope with at all, if

523 A stalking buddy would be a volunteer whom the victim could talk to and who supports the victim.

524 A *Veiligheidshuis* (literally: Safety House) is an information centre for the so-called *ketenpartners* (partners in security, such as the police, the Public Prosecution Service, the aftercare and resettlement organisations and mental health organisations) where not only the domestic violence policy is set out, but where also individual domestic violence cases are discussed and decided on.

you know how to handle this type of cases. His pragmatic approach had brought relief to many victims. The vice officer from Tilburg and the teacher from Nijmegen, however, considered Article 285b DCC too complex and the curriculum for police officers in training too crammed to invest in more education for generalist police officers. Their ideal solution, instead, would be to train specialists for this job, just as there are specialists for vice cases. They do, however, recognise that these plans are probably too ambitious, given the lack of resources and manpower and the large number of stalking and domestic violence reports.

7.5. Conclusion

Despite the relatively good scores of the Dutch police officers in the Modena report, the interviews with practitioners showed that there are still substantive problems in the investigation and prosecution of stalking cases. Certain problems had already surfaced in the victims' survey and the interviews, such as the fact that evidence collection poses difficulties; that the cases generally take a long time; and that much is expected from the victim him- or herself. Other problems were new, like the clumsiness or the inconsistency of certain victims and the lack of capacity in every link of the criminal justice chain.

One of the problems that needs to be taken care of as soon as possible is the creation of a new protocol on stalking to be made available (again) on the Police Knowledge Net. It is a simple and cheap instrument that potentially reaches a very large audience and that could improve matters greatly. It is incomprehensible that the old protocol was removed with such indifference and that the creation of a new one was left to a handful of volunteers with only limited time. If generalist police officers could rely on a simple protocol that advises them from beginning to end, they would not have to reinvent the wheel over and over again. Simple mistakes, such as the omission of the complaint or flawed evidence would be avoided and the timely response, that many respondents seem to advocate, could be promoted.

This protocol would also be the perfect platform from which to launch a more uniform, problem-oriented approach, instead of the current hotchpotch of 'trial and error' practices with their focus on investigation and prosecution. Whenever possible, one informative conversation with the stalker at an early stage should be seriously considered, not predominantly with the aim of gathering evidence, but with an eye to the cessation of the stalking. If the stalker continues after this official warning – a warning that should be carefully recorded in the file – this can be considered an important indicator of the 'systematic fashion' in which the stalker behaves. In this manner, the handling of stalking cases may turn out far less time-consuming and demanding than is generally thought. The assignment of one (group of) contact person(s) to the case is something that should be stimulated in the protocol as well.

However, in order for it to work properly, the police and the Public Prosecution Service should no longer be evaluated on the basis of prosecuted cases only, but of successful interventions, in the sense that the stalking stopped, too. The so-called performance contracts – contracts between the government and the police in which certain performance goals, such as number of

reports, clear-up rates, and number of fines imposed, are established[525] – can have a negative impact. On the one hand, they may augment the transparency and the efficiency of the criminal justice system and they may stimulate the police to do a better job, on the other hand, there is a substantial risk that it leads to strategic behaviour and diminished ambitions in the sense that police officers restrict themselves to the goals that are set out in the contract and ignore other, equally important tasks.[526]

A protocol should, furthermore, incorporate all stalking cases, not just the ones that are related to domestic violence, as is the current practice in the Domestic Violence Instruction. Although a certain distinction between cases is not problematic as regards their assessment – in fact, it is highly recommendable to recognise that ex-partners are generally more violent than other stalkers – but a distinction that amounts to different treatment merely because of the nature of the prior relationship between stalker and victim should not be stimulated. In that respect, even some of the respondents who had often worked with stalking victims and who were consequently more sensitive than others to stalking victims' issues, were not entirely free from prejudice. This is evidenced by the fact that some automatically qualify non-ex-intimate stalking as 'less serious'. In their opinion, victims who are not harassed by ex-partners should in principle always try alternative means first before coming to the police. Advising victims on alternative means of dispute resolution or on practical ways in which to protect their privacy is fine as long as the victim is not reproached for not following up on that advice; the police do not send away a victim of petty theft with advice on security either. Ultimately, the victim always has the right to file a report and to be helped by the police.

A practice that should definitely be stimulated is the custom already employed as a standard by certain public prosecutors to try for preventive custody whenever possible, irrespective of the fact that the pre-trial detention is often suspended by the examining magistrate. Although cases in which the suspect is actually placed in detention are scheduled first on the trial list before cases in which the pre-trial detention has been suspended, the victims whose stalkers are subjected to certain conditions are better protected than those whose stalkers are not brought before an examining magistrate at all, that is to say, *only* if a violation of the condition is consistently followed by a withdrawal of the suspension of the preventive custody.

In addition to a protocol, an ideal solution would be to train specialist police officers too. Article 285b DCC is probably too complex for generalist police officers to apply correctly, so they should only be equipped to do a proper intake and to start a file, after which specialists should take over. In this way there would no longer be a concern about police officers being insensitive or ignorant.

Another important suggestion is to include the topic in the meetings of the *Veiligheidshuizen*. Although the respondents who proposed this intended to include only serious stalking that is related to domestic violence – something that probably should already be discussed in the monthly meetings anyway – the bar could be raised a little higher. Instead of being restricted to

525 M.S. Groenhuijsen, 'Prestatiecontracten met de politie: Afspraken over veiligheid en kwaliteit?', *Delikt en Delinkwent* (33) 2003-6, pp. 560-566.

526 V.T. Haket, *Veranderende verhalen in het strafrecht. De ontwikkeling van verhalen over verkrachting in het strafproces* (diss.), Ridderkerk: Ridderprint 2007, p. 35, note 27.

the domestic violence context only, the *Veiligheidshuizen* could expand their attention scope to the larger issue of repetitive, interpersonal violence. These latter two recommendations, however, may require too much of a criminal justice system that is (perceived to be) overburdened and short-staffed already.

The other issues that were encountered will be dealt with in the next chapter, because they require a more thorough legal analysis. In the next chapter *inter alia* the issue of double jeopardy will be explored and the rules of evidence will be explained, in order to see whether these two issues really pose a problem in the prosecution of stalking cases or whether the police and the public prosecutors are worried over nothing.

CHAPTER 8

LEGAL ANALYSIS OF SOME OF THE PROBLEMS

8.1. Introduction

The previous chapters served as a means to filter out the main issues that victims, the police, or the Public Prosecution Service come across when faced with a stalking situation. But where some of the issues could be solved, or at least improved, by rather straightforward measures such as the creation of a protocol, others did not have such unequivocal solutions. These issues require a more extensive exploration of their legal background, their interpretation, and the specific difficulties they present to the investigation and prosecution of stalking.

One of those issues is that the victim is supposed to be kept informed of important decisions and that he or she should be treated properly. In Section 8.2 it will be shown that these prescriptions are not merely favours bestowed upon victims by the officers in charge, but that they are in fact rights of all victims who come into contact with the criminal justice system. The procedural rules and rights that apply to Dutch victims of stalking are scattered over various types of legislation and regulation. They range from a general EU Framework Decision to a highly specialised national Instruction for the police and the Public Prosecution Service that specifically applies to victims of domestic violence and stalking. An overview of the relevant regulations concerning the procedural rights of Dutch stalking victims will be set out in

Section 8.2: from the international to the national; from the general to the specific; and from the highly mandatory to the 'soft' rules.

Another issue that needs to be looked into is the fact that many legal practitioners foster the notion that stalking is a complex crime to prove. In Chapter 4 it was already shown that, in contrast to these general assumptions, Article 285b DCC is interpreted quite leniently by the Netherlands Supreme Court: a few incidents can already suffice. However, a legal analysis of the stalking provision itself is only one part of the story. The other part concerns the rules of evidence in general. In the Netherlands, evidentiary rules have been developed over the years that apply to all cases that are brought before a court of law. The evidence will have to meet certain minimum standards, which will be explained in Section 8.3.

A final topic that deserves further analysis is the issue of *ne bis in idem* or double jeopardy. Some public prosecutors find themselves in a true catch-22 situation, when having to decide on the prosecution of isolated stalking incidents that are also liable to punishment under other criminal provisions. An immediate settlement of isolated incidents would prolong the completion of the stalking case, whereas the postponement of an official reaction to blatant crimes is contrary to established criminological theories on the deterrent effect of a quick

response to crime.[527] In Section 8.4 it will be shown whether the two options are by necessity always mutually exclusive or whether it is possible to have it both ways without violating the rights of the accused.

8.2. (Stalking) victims' rights

The view on the position of the victim within the criminal procedure has changed significantly over the years.[528] When the Dutch Code of Criminal Procedure was developed in 1926, the legislator saw the victim primarily as a witness who served as an instrument in bringing the objective truth to light during a criminal investigation. As far as the victim's personal interests with a prosecution were concerned, the public prosecutor was supposed to take notice of these interests and appraise them accordingly, but the victim him- or herself had no saying in this matter. Participation of the victim in criminal proceedings was generally in the state's interest instead of the victim's.[529] Especially in the last twenty to thirty years, this marginal role of the victim has been revalued. Victims became more self-aware and complained about the attitude of police and judicial officers. The unwillingness of the police to keep in contact with the victim throughout the procedure, the lack of information, and the disinterested attitude of the public prosecutor during a trial caused much dissatisfaction,[530] even to the extent that victims ran the risk of being victimised for the second time by taking part in the criminal proceedings.[531] There was a growing political and societal awareness that the position of the victim in criminal proceedings was in need of enhancement and slowly but steadily the tide changed. At first, the call for recognition of victims as persons vested with rights was not taken seriously,[532] but soon procedural rights for victims were expanded or introduced, both nationally and internationally.

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527 Van Dijk, Sagel-Grande & Toornvliet say that many authors concur with Sutherland and Cressey that the effectiveness of penalties is dependent on their 'uniformity, certainty, *celerity (swiftness)* and severity [my italics]' (J.J.M. van Dijk, H.I. Sagel-Grande & L.G. Toornvliet, *Actuele criminologie*, Lelystad: Koninklijke Vermande 1995, p. 155, referring to E.H. Surtherland & D.R. Cressey, *Criminology*, Philadelphia: Lippincott 1970).

528 See the Explanatory Memorandum of the Bill to change the Code of Criminal Procedure to enhance the position of the victim in criminal proceedings (*Kamerstukken II* [Parliamentary Papers] 2004/2005, 30 143, no. 3, p. 1).

529 M.S. Groenhuijsen & S. Reynaers, 'Het Europees kaderbesluit inzake de status van het slachtoffer in de strafprocedure: Implementatieperikelen en interpretatievragen', *Panopticon (*3) 2006, pp. 12-33.

530 J.M. Wemmers, *Victims in the criminal justice system. A study into the treatment of victims and its effects on their attitudes and behavior* (diss.), Amsterdam: Kugler Publications 1996.

531 See for example, U. Orth, 'Secondary victimisation of crime victims by criminal proceedings', *Social Justice Research* (15) 2002-4, pp. 313-325. Secondary victimisation means that a victim or a surviving relative needs to process the disadvantages of the crime committed against him or her and that he or she cannot be damaged/ hurt as a consequence of a perceived unsatisfactory treatment during the criminal proceedings, for example, by reactions of the defence or by the role of the media around the proceedings. Raised expectations that cannot be fulfilled can also lead to secondary victimisation. The lack of insight into the needs and interests of victims or a too cold and businesslike treatment of the victim are another cause of secondary victimisation (Oral and written Victim Impact Statement Instruction (Aanwijzing spreekrecht en schriftelijke slachtofferverklaring), *Staatscourant* 2004, 248, p. 30).

532 Groenhuijsen & Reynaers (2006).

8.2.1. The Victim Support Act

In the Netherlands, the increasing interest in victims the 1970s expressed itself at first in more awareness of the need for victim care within a victim support scheme. It was not until the 1980s that victim support by the police and the Public Prosecution Service started to play a part as well.[533] From the second half of the 1980s, victim policy instructions in the form of victim guidelines or victim instructions were issued, starting with the so-called Vaillant Guidelines *(Richtlijnen Vaillant)*.[534] They obliged the police and the Public Prosecution Service to inform victims on the progress of their case and to inquire after their need for compensation.

The year 1995 was also of great emancipatory importance to the status of the Dutch victim within criminal proceedings. With the nation-wide introduction of the Victim Support Act *(Wet Terwee)* on April the first, several victims' rights were significantly enhanced or formally codified for the very first time.[535] The Act proposed additions to the Code of Criminal Procedure, the Criminal Code, the Criminal Injuries Compensation Fund Act *(Wet Schadefonds Geweldsmisdrijven)*, and other laws that contain provisions for the benefit of victims of crimes. The major changes that derived from the Victim Support Act can be summarised as follows:

- The possibilities for the victim to submit a claim for civil damages by joining in the criminal proceedings as an injured party (Art. 51a DCCP).
- The court was given the possibility to impose a compensation order to restore the righteous situation (Art. 36f DCC).
- The court could sentence the perpetrator to pay a sum of money to the Criminal Injuries Compensation Fund or a different institution that promotes the interests of victims of crime (Art. 14c paragraph 1 under 4 DCC).
- The Criminal Injuries Compensation Fund Act was improved.

With an eye to the Victim Support Act, the Vaillant Guidelines needed to be revised so that the police and the Public Prosecution Service would be encouraged to stimulate the settlement of damages within the context of the criminal proceedings.[536] Next to the promotion of (informal) damage settlement in an early stage, the police and the Public Prosecution Service are also obliged under the Victim Support Act to treat victims properly, and to collect and supply information to victims. As a result, the existent guidelines were replaced, first by the Victim Care Guidelines *(Richtlijn slachtofferzorg)*[537] and later on by the Victim Care Instruction *(Aanwijzing slachtofferzorg)*.[538]

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533 *Kamerstukken II*, 1999/2000, 27 213, no. 1, p. 4.

534 *Staatscourant* 1987, 64.

535 *Staatsblad* 1995, 160.

536 R. Kool & M. Moerings, *De Wet Terwee. Evaluatie van juridische knelpunten*, Deventer: Gouda Quint 2001.

537 *Staatscourant* 1995, 65.

538 The first Victim Care Instruction was published in *Staatscourant* 1999, 141; its successor in *Staatscourant* 2004, 80.

8.2.2. The Victim Care Instruction

The Public Prosecution Service is headed by the Board of Procurators-General *(College van procureurs-generaal)*.[539] Policy rules can be laid down in instructions. On the basis of Article 130 paragraph 4 of the Judiciary Organisation Act *(Wet op de Rechterlijke Organisatie)*, the Board can impose these policy rules on the members of the Public Prosecution Service.[540] The Public Prosecution Service is allowed to depart from these rules, but it has to motivate the deviation. If, for whatever reason, members of the Public Prosecution Service do not comply with the rules, the Board can call these persons to account.[541] More importantly, the rules have external effects and are acknowledged by the Supreme Court as being part of the 'law of the land' in the meaning of the Judiciary Organisation Act *(Wet op de Rechterlijke Organisatie)*. This means that citizens can appeal to the courts.[542] The Victim Care Instruction is an example of an instruction issued by the Board of Procurators-General. Three basic principles are embedded in the Victim Care Instruction:

a) A proper and – if necessary – personal treatment of the victim.
b) A quick, clear and relevant supply of information to the victim.
c) A settlement of material and emotional damages as part of the criminal proceedings whenever possible.

The Instruction continues with a description of the consecutive tasks of the police and the Public Prosecution Service in the different stages of the procedure. In the investigation stage, it provides that the police have to take down a report carefully, that they provide the victim with general information on the course of action following a report and the possibilities of damage settlement, and that they hand out a leaflet on the national victim support organisation. They must explicitly ask the victims whether they object to their contact details being passed on to the local victim support office, whether they wish to be kept informed of all relevant decisions in their cases, and whether they have suffered any material or emotional damage. If the case is deemed suitable for damage settlement – i.e., the suspect has confessed and is able and prepared to pay material damages, which can easily be established – the police need to stimulate a settlement in this stage.

When a case proceeds to the prosecution phase – an event of which the victim should be informed – the public prosecutor needs to complete the file with the victim's wishes. In the

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539 Article 130 paragraph 2 Judiciary Organisation Act *(Wet op de Rechterlijke Organisatie)*.

540 M.J. Borgers, 'Het wettelijke sanctiestelsel en de straftoemetingsvrijheid van de rechter', *Delikt & Delinkwent* (2) 2005, pp. 111-204, at p. 137.

541 M. Duker, *Legitieme straftoemeting. Een onderzoek naar de legitimiteit van de straftoemeting in het licht van het gelijkheidsbeginsel, het democratiebeginsel en het beginsel van een eerlijke procesvoering* (diss.), Den Haag: Boom Juridische Uitgevers 2003, p. 85; D. van Daele, *Het openbaar ministerie en de afhandeling van strafzaken in Nederland*, Leuven: Universitaire Pers Leuven 2003, p. 349; Borgers (2005), p. 141. The defendant and the defence council are also allowed to address any deviation from the Board's policy (Borgers (2005), p. 141).

542 Van Daele (2003), p. 139; G.J.M. Corstens, *Het Nederlands strafprocesrecht*, Deventer: Kluwer 2008, p. 32; M.S. Groenhuijsen & A. Pemberton, 'The EU Framework Decision for victims of crime: Does hard law make a difference?', *European Journal of Crime, Criminal Law and Criminal Justice* (17) 2009, pp. 43-59.

case of serious offences, the prosecutor offers the possibility of a personal interview with him or her preceding the trial. If the victim has indicated that he or she wishes to be kept informed of the progress of the case, all relevant events in the prosecution such as a decision not to prosecute, the joining of causes of action *ad informandum*, or the date of the trial (including its adjournment or suspension) need to be communicated to the victim. If a case is dismissed, the victim is informed of the possibility to lodge a complaint against this decision on the basis of Article 12 DCCP.

Damage settlement is stimulated in this phase as well, this time by the public prosecutor. If the victim wants compensation, the public prosecutor has to take this wish into account in all his or her decisions throughout the rest of the procedure, e.g., by demanding compensation in court instead of a fine or by making the option of discharge of liability to conviction by payment of a fixed penalty *(transactie)* dependent on a satisfactory settlement of the damages. If damages have not been settled prior to the trial, the victim is allowed to submit a claim for civil damages by joining in the criminal procedure as an injured party – a possibility of which the victim is informed by means of a criminal injuries compensation form – and the victim is allowed access to the case file (Article 51d DCCP).

Next to the Victim Care Instruction that applies to all victims, certain crimes were considered so heinous and certain groups of victims were considered so vulnerable, that additional Instructions and provisions were drafted.[543] The Instruction that is of particular importance to victims of stalking by family members, ex-partners, or family friends is the Domestic Violence Instruction,[544] which was already discussed in Chapter 7. The Domestic Violence Instruction stipulates once more that the supply of information to victims is of the essence. In that respect it has some overlap with the Victim Care Instruction. New elements are that the victim's address is left out of the report, that victims are stimulated to file a complaint and that the victims are asked whether they would like a restraining order to be imposed. First and foremost, the Domestic Violence Instruction expresses the wish to investigate and prosecute cases of domestic violence with rigour. One of the goals is to end domestic violence immediately and to guarantee the protection of the victims.[545]

Apart from the creation of a working protocol for the police and the Public Prosecution Service, the added value of the different instructions also lies in the documented commitment of these organisations to victims and their interests. They have declared themselves to always take into account the interests of the victims and to provide them with sufficient information, to make an effort for damage settlement in an early stage, and to treat the victim correctly. For an outsider, it is sometimes unclear that these instructions are not mere declarations of intent,

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543 For victims of serious crimes, for example, an Instruction was designed that regulated the newly enacted provision on written and oral victim impact statements (Article 302 DCCP). The applicable Instruction is called the Instruction on Oral and Written Victim Impact Statement (Aanwijzing spreekrecht en schriftelijke slachtofferverklaring; *Staatscourant* 2004, 248; entry into force 1 January 2005). Furthermore, there are Instructions on (victims of) vice offences, the Investigation and Prosecution of Vice Offences Instruction *(*Aanwijzing opsporing en vervolging inzake seksueel misbruik, *Staatscourant* 2008, 253) and on (victims of) child abuse (the Investigation and Prosecution of Child Abuse Instruction *(Aanwijzing opsporing en vervolging inzake kindermishandeling)*, *Staatscourant* 2009, 116.

544 Aanwijzing Huiselijk Geweld, *Staatscourant* 2008, 253.

545 Aanwijzing Huiselijk Geweld, *Staatscourant* 2008, 253, Section 3.

but they provide directly enforceable rights. If a victim feels unfairly treated, if he or she has not received information on the progress of the case, or if the police and the Public Prosecution Service have failed to meet their self-imposed standards in any other way, then the victim can appeal to court. The Council of the European Union, therefore, was mistaken when it objected to the weakness of the instruction when the compliance of the Netherlands with the Council's Framework Decision on the Standing of Victims in Criminal Proceedings was assessed.[546]

8.2.3. Council Framework Decision on the Standing of Victims in Criminal Proceedings

The recognition of victims and their rights was not a strictly domestic affair. On the international level, there had been some interesting developments too. In 1985, the United Nations had drafted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and in the same year the Council of Europe had laid down its advice in the Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure.[547] These instruments, however inspiring they may have been, were non-binding. An international instrument that did have the power to force states to implement actual changes was introduced on 15 March 2001 when the Council of the European Union adopted the Framework Decision on the Standing of Victims in Criminal Proceedings (hereafter: the Framework Decision).[548] Its main purpose was to harmonise the laws and regulations of the member states to the extent that a high level of protection for victims was established and guaranteed irrespective of the member state in which victims would enforce their rights. Victims were to be acknowledged as a subject vested with rights and granted a genuine role in the criminal proceedings.

The Framework Decision concerns all the main rights of victims, but 'the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure and the right to have allowance made for the disadvantage of living in a different member state from the one in which the crime was committed' are mentioned in Recital 8 as rights that deserve special attention.

Next to several concrete rights that give specific pointers for member states,[549] the Framework Decision contains articles that are formulated in general terms.[550] The right to respect and recognition, for example, reads that '[e]ach Member State shall ensure that victims

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546 Geelhoed also came to the conclusion that, in the light of the case law of the Court, a transposal of the Framework Decision in formal legislation is almost inevitable (W. Geelhoed, 'Omzetting van het kaderbesluit slachtofferzorg in beleidsregels van het Openbaar Ministerie of in formele wetgeving?', *Nederlands Tijdschrift voor Europees Recht*, 2009-10, pp. 328-334). The Court ruled that factual adherence is not enough when administrative agencies would be at liberty to change the rules at their discretion.

547 The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Res. 40/34 of 29 November 1985, and the Recommendation (1985)11 on the Position of the victim in the Framework of Criminal Law and Procedure, adopted on 28 June 1985, respectively.

548 Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA).

549 E.g., Article 8 paragraph 3 of the Framework Decision on the obligation to provide special waiting areas for victims on court premises.

550 Also Groenhuijsen & Pemberton (2009).

have a real and appropriate role in its criminal legal system. It shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings'.[551] Paragraph 2 continues with the provision that '[e]ach Member State shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances'. What 'a real and appropriate role' for victims in the criminal legal system exactly entails, how much can be expected from a member state when it complies with the order to 'make every effort' to ensure that victims are treated with due respect or which victims fall under the category of the 'particularly vulnerable' remains unclear. It is not clear in advance what concrete requirements for the member states derive from the Framework Decision. In this way, the member states are left a considerable degree of freedom to decide on the manner in which to transpose the Framework Decision into their national legal system. A Framework Decision has no direct effect and the instrument is only legally binding as regards the result. The national authorities can decide on the form or methods to achieve the result.[552] Some provisions, however, set such general goals that member states seem to be left a considerable degree of latitude as to the results as well. It is up to the member states themselves to outline the exact parameters of the Framework Decision by interpreting the articles and, if necessary, adjusting the national laws accordingly within a set period of time.[553]

In a letter of 20 March 2002, the Dutch government notified the Commission of the way in which the Netherlands had executed the requirements as laid down in the Framework Decision.[554] Its overall conclusion was that the policy and practices of that time were already basically in line with the Framework Decision and that there was no need for additional legislation.[555] Much to the government's surprise, the Commission completely disagreed with this point of view. In its report the Commission contended that 'a Member State can be held to have granted a genuine status to victims as required by the Framework Decision only if it has properly transposed

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551 Article 2 of the Framework Decision.

552 Article 34 paragraph 2 under b of the Union Treaty.

553 The exact deadlines are given in Article 17 of the Framework Decision. Although the Commission cannot bring an action in the European Court of Justice to force a member state to transpose the Framework Decision, member states are not entirely free to interpret the provisions in any way they see fit. First of all, as a controlling mechanism, the member states are obliged to send a notification of their performances to the General Secretariat of the Council and to the Commission. On the basis of this information, the Council assesses whether the measures taken by the member states comply with the provisions of the Framework Decision (Article 18 Framework Decision). Furthermore, a dispute between two member states *can* be brought before the ECJ when there is a disagreement over the interpretation or implementation of the Framework Decision (Article 35 paragraph 7 of the EU Treaty). Likewise, the national courts can ask for a preliminary ruling to the same end, provided that the member state in question has accepted the jurisdiction of the ECJ to rule on the validity and interpretation of the acts referred to in Article 35 EU in accordance with the rules laid down in paragraph 3(b) of that Article. Finally, in the *Pupino* case, the ECJ ruled that 'the national court is required to take into consideration all the rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the Framework Decision' (Consideration 62, ECJ 16 June 2005, case C-105/03 *(Pupino)*.

554 Letter of the Dutch government to the Commission of the European Union on the 'evaluation Framework Decision victim care', 20 March 2002, unpublished.

555 *Kamerstukken II* 2004/2005, 30 143, no. 3, p. 2; Also *Kamerstukken II*, 2000/2001, 27 213, no. 2, p. 3.

all the Articles of the Framework Decision'[556] and – just like all the other member states – the Netherlands were weighed and found wanting. Many articles were assessed as either not transposed, not correctly transposed or there was no notification of provisions transposing the articles.[557] Furthermore, the Commission and the Dutch government disagreed on the proper legislative instrument with which the Framework Decision should be transposed. The Dutch practices, that were for a large part incorporated in the Victim Care Instruction, could not convince the Commission. The Dutch were of the opinion that a conversion of the requirements in victim guidelines would suffice, whereas the Commission thought a more mandatory provision more appropriate.[558] As a concession the Dutch legislator was willing to lay down several victims' rights in a new section of the Code of Criminal Procedure dedicated to victims.

8.2.4. Bill on the enhancement of the position of the victim in criminal proceedings

Inspired by the recommendations of a research project on criminal proceedings[559] and after a careful consideration of the other interests involved – those of other participants in the criminal proceedings and the capacity of the judicial apparatus – the bill to change the Code of Criminal Procedure to enhance the position of the victim in criminal proceedings was aimed to codify several victim's rights in a special section of the DCCP.[560] The legislator did explicitly point out, however, that the codification would merely be a formal recording of an already existent practice. It would not entail a substantial change to the way in which the police and the Public Prosecution Service were dealing with victims at the time.[561]

The term 'victim' was defined and provisions on the victim's right to information on the criminal proceedings, the right to information on the possibilities of compensation and the right to proper treatment during criminal proceedings were drafted. Victims' interests had to be taken explicitly into account when deciding on whether or not to prosecute and an extension of the right to gain access to the case file or to add documents to the case file were included

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556 *Report from the Commission of the European Communities on the Basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings*, Brussels, 3 March 2004, COM(2004)54 final, p. 5. The 2009 report was equally critical (*Report from the Commission pursuant to Article 18 of the Council Framework Decision of 15 march 2001 on the standing of victims in criminal proceedings*, Brussels, 20 April 2009, COM(2009)166 final.

557 Article 7 on victims' expenses with respect to criminal proceedings, for example, was not transposed. The right to receive information by posting the requisite information on the websites of the relevant agencies and/or by creating information booklets did not meet the standard set by Article 4. Authorities need to actively provide individual victims with information. Finally, there was no notification of provisions transposing Articles 4(3), 4(4), 8(3) and many other ones.

558 F.G.H. Kristen & J.B.H.M. Simmelink, 'Europese integratie door de rechter: kaderbesluitconforme interpretatie', *Delikt & Delinkwent* (75) 2005-9, pp. 1058-1078; R.A.M. van Schijndel, 'De implementatie van het Kaderbesluit inzake de status van het slachtoffer in de strafprocedure; een veeleisend Europa of een behoudend Nederland?' in M.J. Borgers, F.G.H. Kristen & J.B.H.M. Simmelink (eds.), *Implementatie van kaderbesluiten.* Nijmegen: Wolf Legal Publishers 2006, pp. 173-186.

559 This research project was M.S. Groenhuijsen & G. Knigge (eds.), *Strafvordering 2001. Het onderzoek ter zitting*, Deventer: Gouda Quint 2001, and M.S. Groenhuijsen & G. Knigge (eds.), *Strafvordering 2001. Dwangmiddelen en rechtsmiddelen*, Deventer: Kluwer 2002.

560 *Kamerstukken II* 2004/2005, 30 143, no. 3, p. 1.

561 *Kamerstukken II* 2004/2005, 30 143, no. 3, p. 2.

in the bill's catalogue of victims' rights. Finally, the victim had the right to legal counsel, an interpreter and – in the case of certain serious crimes – the possibility to read out a Victim Impact Statement in court. Several of the aforementioned rights would pass on to the bereaved if the victim had died as a result of the crime.

Taken together, these measures would have meant a clear enumeration and enhancement of victims' rights. *Would have* indeed, for despite the government's argument that the codification of victims' rights would merely be a formality since no changes would be made to existent practices, Parliament kept it under consideration for a considerable amount of time. Even a letter of the Minister of Justice that was sent to the chairman of the Lower House of Parliament two years after the bill was drafted, urging him to finally enable a swift public discussion[562] remained without effect for a long time. Finally, the bill was approved on 15 December 2009 by the Upper House of Parliament and it will take effect on 1 January 2011.[563] For the state of the art on Dutch (stalking) victim's rights, we therefore still need to turn to other sources, such as the Victim Support Act, the codification of the Victim Impact Statement, the Victim Care Instruction, and the Domestic Violence Instruction.

8.2.5. Taking stock of (stalking) victims' rights

With the catalogue of victims' rights spread across various types of regulations on several different levels, and with stalking being a multi-faceted crime, it is sometimes difficult to see the forest for the trees. From the above sections, however, it can be concluded that certain (stalking) victims' needs seem to have gained universal recognition. The right to receive information is well-documented both on a national and on an international level and its interpretation seems more or less univocal. Victims have the right to receive general information on their rights and possibilities of action in criminal proceedings and the Commission's reports made it clear that the requisite information needs to be actively supplied by the authorities: information on websites or in information booklets is not enough. Victims also have the right to receive information concerning the outcome of their case and the release of the offender. Finally, the right not to receive information is respected, too.

The right to respect, recognition and proper treatment is widely acknowledged as well, but what this right exactly entails is more obscure. Article 2 of the Framework Decision contains several abstract terms like 'real and appropriate role' or 'due respect for the dignity of the individual'. For a member state that wishes to implement the Framework Decision properly the Article does not provide much to hold on to. Is the paragraph meant as a pointer to professionals to observe their manners when they come into contact with victims and treat them respectfully or does it serve as an obligation to create a fixed modus operandi whenever a victim enters the legal system?

Thanks to the report of the Commission, Article 2 has been clarified a little further. In the Commission's view, this provision 'announces the general aim of the authors of the Decision of ensuring a real status for victims in criminal proceedings'. It furthermore contends that

562 *Kamerstukken II* 2007/2008, 30 143, no. 14.

563 See <www.eerstekamer.nl>.

the provision has a 'primarily declaratory function' and that 'a Member State can be held to have granted a genuine status to victims as required by the Framework Decision only if it has properly transposed all the articles of the Framework Decision'.[564] In other words, a victim's right to respect seems to find its core in the creation of certain procedural rights rather than in a behavioural guideline for professionals who come into contact with victims. Undoubtedly, the implementation of procedural rights will automatically imply a certain degree of civility, but these goals do not exactly correspond.

The Dutch government, however, does seem to have interpreted the Article also in the behavioural fashion. The proposed Article 51a paragraph 2, for example, states that '[t]he public prosecutor takes care of the proper treatment of the victim'. Furthermore, the government in using the same terminology as the Framework Decision, states that 'the criminal procedure must not increase the suffering of and the damage to the victim'. The goal is to prevent secondary victimisation. In line with the above it is

> inappropriate that already at the start [of a criminal investigation] a reservation is made in view of the question of whether one will be able to establish eventually whether the person who claims to be a victim will still be a victim at the end; that is only possible after the decision against the suspect has become final. In principle, everyone who reports himself to the police as a victim has the right to a proper treatment. This is irrespective of the possibility of false complaints or reports (...). There is, however, no reason not to depart from the good faith of the victim and to treat all victims with reticence in advance. [565]

Suspects are considered to be innocent unless proven otherwise. For victims, an adjusted adage applies: they are victims unless the opposite is proven.[566] In other words, every one who claims to be a victim has to be taken seriously.

The Victim Care Instruction only pays minimal attention to the right to proper treatment. Apart from the notion that proper treatment is also expressed in providing understandable information to the victim or the bereaved, the Instruction does not further specify 'proper and personal treatment'. According to a letter from the then Minister of Justice, Mr. Korthals, to the chairman of the Lower Chamber of Parliament that was sent on the 26th of June 2000, proper and personal treatment is manifested by an attempt to prevent long waiting periods for reporting a crime, in providing privacy to victims reporting a crime, in a certain empathy of the person who takes down the report and in a prevention of secondary victimisation of the victim to the furthest extent possible.[567] This letter echoed the behavioural interpretation. The letter not only contained an explanation of the concept of 'proper and personal treatment' in terms of prevention of long waiting periods, but it also referred to an empathic attitude of police officers and a prevention of secondary victimisation.[568] From a victims' rights perspective, it is a shame

564 Report from the European Commission (2004), p. 5.

565 *Kamerstukken II*, 2004/2005, 30 143, no. 3, p. 6.

566 *Ibid.* See also M.E.I. Brienen & E.H. Hoegen, *Victims of crime in 22 European criminal justice systems* (diss.), Nijmegen: WLP 2000, p. 30.

567 *Kamerstukken II*, 1999/2000, 27 213, no. 1, pp. 4-5.

568 *Kamerstukken II*, 1999/2000, 27 213, no. 1, pp. 4-5.

that a similar approach to the right to proper and personal treatment was not adopted in the Victim Care Instruction. Now the meaning of this right is still unclear.

Next to the need for information and the need for proper and respectful treatment, the questioned victims also felt a need for protection against their assailant. The need for protection against the stalker can be found in Article 8(1) of the Framework Decision which obliges the member states to ensure the safety of threatened victims and their family. The Domestic Violence Directive also mentions the guarantee of victims' safety as one of its main goals. However, as regards the actual physical protection of victims, only limited options are available. In the event of a serious threat, the law offers the possibility to make an anonymous statement.[569] If the examining magistrate recognises someone as a threatened witness, this person is no longer obliged to appear in court. Application of anonymous witnesses is only appropriate in the most serious and extraordinary cases, but more importantly, it is hardly effective in cases of stalking, where the offender is aware of the identity of the victim. Stalking victims who have moved to another address or who have found refuge in a safety house can benefit from the possibility to choose the police station as the address for service. Furthermore, the victims of stalking by family, ex-partners, or family friends can also indicate to the police whether they wish to have a restraining order to be imposed. Finally, the AWARE alarm, that does seem to have been designed to provide victims with some form of protection, is not used throughout the country and is only available for victims of very serious stalking.

As for the final most important problem that stalking victims reported – the need for a short processing time of cases – no officially documented support can be found. The government explicitly rejected the victim's right to a treatment of the case within a reasonable period of time.[570] Even though the government agrees that the victim has an interest in a reasonable processing time of the case, an independent and enforceable right to this extent was considered a bridge too far. The reasons for delay in the criminal investigation are often rooted in technical investigation difficulties or a lack of capacity within the criminal courts.

The above shows that, since the 1980s, there has been a rise in the creation of victims' rights, that some of these rights that are of importance to stalking victims still have not completely crystallised out (e.g., the right to proper treatment) or are not supported at all (the 'right' to a timely processing time of cases), and that, nevertheless, these rights do impose duties or aspirations on the police and the Public Prosecution Service.

569 Articles 226a- 226e DCCP.

570 *Kamerstukken II* 2004/2005, 30 143, no. 3, p. 13.

8.3. Rules of evidence

A court can only come to the conclusion that the accused has committed a crime if the charges are proven beyond a reasonable doubt.[571] Absolute certainty is not required, but there has to be more than the mere probability that the indictment is correct. In reaching a conclusion, the court is bound by certain limitations.[572] First of all, the court has to reach a decision within a reasonable period of time. Endlessly deferring the decision until all possible aspects of a case have been exhaustively investigated is not possible. The court has to consider whether the time involved in ordering additional investigations outweighs the added value of the investigative efforts. Furthermore, the court only has a limited range of instruments to investigate a case; inhumane, illegal or unfair ones are prohibited. Placing the accused under illegal pressure, e.g., by means of torture, to extract the truth is prohibited and evidence that is collected in this manner is subject to the exclusionary rule. A third restriction lies in the requirement that only the sources of evidence that are enumerated in the DCCP are admissible in court. Since the limitative enumeration includes very broad categories, this limitation does not pose a real restriction in practice.[573] The fourth limitation is that the legislator has created certain minimum standards of evidence: a single (anonymous) witness statement or a single confession by the accused is insufficient to base a decision on.

According to Article 338 paragraph 1 DCCP the court is only allowed to declare the charges proven if it has been so convinced based upon the contents of the statutory evidence presented in court. The presence of sufficient evidence needs to be accompanied by the inner certainty of the court that the accused has actually committed the crime. In contrast to legal systems that allow or even oblige a court to pass a guilty sentence based solely on its inner certainty or on there being a certain amount of evidence, both elements are required in the Netherlands.[574] If the court is not convinced of the guilt of the perpetrator or if the evidence does not meet the minimum standards, then acquittal should follow.

What are those minimum evidentiary standards? The first rule is that the decision that the charges are proven has to be founded on more than the statement of the accused alone (Article 341 paragraph 4 DCCP). If the constituent elements of a criminal offence are only supported by the confession of the accused, the court will have to acquit the accused. The confession has to be corroborated by at least one other source of evidence. The rationale behind this rule is to prevent the risk of an accused being convicted on the basis of a false confession. False confessions can be made, for instance, under the influence of improper pressure by the police

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571 G.J.M. Corstens, *Het Nederlands strafprocesrecht*, Deventer: Kluwer 2008, p. 664.

572 *Ibid.*, p. 665, for an overview of these limitations.

573 See Article 339 paragraph 1 and Articles 340-344 DCCP. The statutory sources of evidence are: the court's personal observations during the court hearing, the statement of the accused in or out of court (provided that the statement is on file), the statement of a witness in court (including hearsay testimony), the statement of an expert in court, and written (police) materials. Especially through the personal observation of the court, certain sources of evidence have been introduced that did not even exist at the time of the enactment of the DCCP. For example, a judge can have a look at video or audiotapes and take these observations into account.

574 In France, for example, a court is allowed to declare the charges proven based on the inner certainty alone. In contrast to the situation in France, the evidence and the inner certainty are not separated in the Netherlands (Corstens 2008, p. 666).

(during interrogations), by the desire to spare others the burden of a criminal investigation, or by a mental disorder.[575] Although this rule may seem an important protection against convictions on the grounds of a single confession, the requirement is easily met.[576]

The second minimum standard, which is more relevant to cases of stalking, is that the evidence cannot rest upon the testimony of a single witness *(unus testis nullus testis)* (Article 342 paragraph 2 DCCP). Again, the decision that the accused has committed the offence as charged has to be supported by other material as well. In this manner, the risk that innocent persons are convicted as a result of false testimonies or accusations is reduced. However, just like the inadmissibility of a conviction on the basis of a single confession, the *unus testis nullus testis* rule can be put into perspective, for the supportive evidence does not have to validate the witness's testimony.[577] If one part of the indictment is covered by the testimony, while another part of the indictment follows from a different source of evidence, the accused can be convicted. The part that is derived from another source does not even have to be an essential part of the indictment.[578] There is, furthermore, an exception to the rule that the indictment cannot rest on one piece of evidence only: it is allowed to base a conviction on a single official police report by an investigating officer (Article 344 paragraph 2 DCCP). Again, this relaxed interpretation prevents difficult evidence collection.

Lately, however, a discussion has arisen on whether the Supreme Court has recently switched to a stricter interpretation of Article 342 paragraph 2 DCCP. In June 2009, the Supreme Court quashed two judgments on the ground of a violation of the *unus testis nullus testis* principle. In the first case, the conviction for rape was based on 1) the statement of the victim that she had been raped in the hospital by her ex-husband after having given birth to their daughter, 2) evidence that the woman had occupied a single room in the hospital, and 3) the statement of the suspect that 'he had had a compulsive need for sex'.[579] The Supreme Court ruled that 'the other articles of evidence give insufficient support to the witness's statement'. In the second case, the accused was sentenced to a suspended prison sentence for intimidation

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575 Corstens (2008), p. 677.

576 The legislator did not specify what more evidence there has to be next to the declaration of the accused. The Supreme Court has formulated a standard instead, but its solution may very well be described as 'generous' (Corstens 2008, p. 677) for the additional evidence may cover constituent elements that are not covered by the confession (e.g., HR 15 juni 1976, *NJ* 1976, 551, with commentary by ThWvV). Leaving aside the desirability of such a liberal interpretation and its compatibility with the rationale of Article 341 paragraph 4 DCCP, the only thing that is of importance now is the observation that Article 341 paragraph 4 DCCP *is* liberally interpreted and that the first minimum standard of evidence is easily met.

577 See, for example, HR 18 oktober 1920, *NJ* 1920, p. 1177, W 10645, and HR 17 januari 1927, *NJ* 1927, p. 189, W 11637; HR 15 oktober 1974, *NJ* 1975, 189; HR 21 december 1976, *NJ* 1977, 162 with commentary by GEM (Corstens 2008, p. 695). A classic case in which the rule of *unus testis nullus testis* was invoked and overruled was the so-called *Coca Cola* case (HR 19 oktober 1954, *NJ* 1955, 2 with commentary by WP). In this case, a 10-year-old girl had told her mother and a police officer that a man had lured her into his car and driven her past the Coca Cola factories. After he had stopped the car, he sexually abused the girl. The accused denied the sexual abuse and only confessed to having given the girl a ride in his car. For the Amsterdam Court, this was sufficient evidence to convict the accused, a decision that the accused appealed against. The Supreme Court dismissed the appeal since part of the testimony of the girl (that she was sexually abused after a ride in the suspect's car) was confirmed by the statement of the accused himself (the ride in the car).

578 Corstens (2002), p. 663.

579 HR 20 juni 2009, *LJN* BG7746.

on the grounds of 1) the statement of the victim that the accused had threatened her in Gouda and 2) the statement of the accused that he had visited his uncle that day in Gouda.[580] Again, the Supreme Court thought the statement of the accused insufficient to support the statement of the victim. Dreissen interpreted this case law in the sense that the Supreme Court has taken a firmer stance on the minimum evidentiary standard for witness statements.[581] By using a different formulation ('the other evidence does not sufficiently support the statement of the witness'), she believes that the Supreme Court wanted to indicate that there has to be an *intrinsic connection* between the witness statement and the other evidence.

Still, looking at the cases themselves, it is not certain whether the Supreme Court actually intended to raise the bar for Article 342 paragraph 2 DCCP or whether it just tested the particulars of the two cases against the existent interpretation and found them wanting. Did the Supreme Court create new rules of play or did it just reject the two specific cases on the basis of the old rules? In the first case, the statement of the suspect and the finding that the victim had slept in a single room did not cover part of the indictment, nor could anything be derived thereof as regards the reliability of the witness statement.[582] Even under the 'old rules', the evidence would not have met to the minimum standard. The same goes for the second case. The only thing that was corroborated was the fact that both the victim and the accused had been in Gouda on the same day. In the past, the single confirmation that the suspect had been present in a certain place at a certain time was sufficient. However, in those cases, the place and time were much more specified than the simultaneous presence in a medium-sized Dutch city. Perhaps if the statement of the witness had included information on the exact place where the events took place (the home of the uncle), then the lack of a factual basis would have prevented an appeal in cassation.[583] Until new case law clarifies matters further, it is probably best to stick to the old interpretation.

Next to the problem of the old versus the new interpretation of the minimum standards, another issue is whether *unus testis nullus testis* relates to the indictment in its entirety or whether each count in the indictment has to be corroborated by other evidence. In the Netherlands, the systematic fashion of the stalking is reflected in the indictment by an explicit enumeration of several (types of) incidents. The Public Prosecution Service can, for example, charge a suspect with stalking on the basis of:

- repeatedly, or at least once, setting out for the residence of that [victim] and/or
- loitering in the (direct) surroundings of the residence of the [victim] and/or
- approaching that [victim] and/or
- seeking contact with that [victim] by telephone and/or
- sending that [victim] text messages.[584]

Assuming that the victim has testified to all these incidents, is it then still necessary to find

580 HR 20 juni 2009, *LJN* BH3704.

581 W.H.B. Dreissen, 'Eén getuige is geen getuige', *Delikt en Delinkwent* (57) 2009-7, pp. 760-776.

582 It only showed the unreliability of some of the statements that the accused had made in court.

583 This is also suggested by Bleichrodt in his conclusion to the case.

584 Rb Arnhem [Arnhem District Court] 3 augustus 2009, *LJN* BJ4889.

corroborating evidence for all five enumerated behaviours or does evidence for only one or two incidents suffice? If Article 342 paragraph 2 DCCP is followed to the letter, the statement of the victim in combination with, for example, a calling history that proves the repetitive phone calls would be enough to satisfy the minimum requirements. After all, only one part of the indictment has to be corroborated. It could be argued that with the establishment of harassment by phone, the reliability of the victim's testimony is verified and, with that, also the occurrence of the other four stalking tactics.

This, however, does not seem to be the view adopted by certain (if not most) courts. They have a tendency of looking at each count independently from the others and if it is supported by nothing more than the statement of the victim, it is excluded from the judicial finding of fact.[585] In the worst case scenario, there may be too few incidents left to convict the accused of stalking.[586] The rationale behind this course of action is probably that one incident can be completely isolated from the other. When the Public Prosecution Service can successfully corroborate the victim's statement that the suspect has made 50 telephone calls on a certain day, this does not automatically imply that (s)he was also simultaneously posting outside the house of the victim or that (s)he was the author of the threatening letters. Whether this is the correct interpretation of Article 342 paragraph 2 DCCP or whether the Article is less stringent has not yet been subjected discussed by the Supreme Court or even one of the Courts of Appeal. Meanwhile, most indictments seem to contain enough provable counts to find someone guilty, but the legal practitioners are advised to keep these court practices in mind when collecting evidence.

The final two minimum standards relate to evidence that involves anonymous testimonies (Article 344a paragraph 1 DCCP) and testimonies by 'crown witnesses' (Article 344a paragraph 4 DCCP): suspects who struck a deal with the Public Prosecution Service to testity against other suspects in exchange for a reduction of the sentence in their own trial. Although the rules of evidence are somewhat stricter in cases that involve crown witnesses, and even more so in cases with an anonymous witness, it must be borne in mind that these rules will seldom apply to cases of stalking. Anonymous witnesses and crown witnesses belong more to the realm of terrorist, drug-related, and organised crime than interpersonal violence disputes. Therefore the chances of the courts ever having to take these rules into account when confronted with an alleged stalker are negligible. For this reason, they will not be discussed here.

All in all the minimum standards of evidence are interpreted quite leniently. Taking into account that corroborating evidence is only required for the indictment as a whole instead of every single constituent element and that a conviction may be based on a police report without further additional evidence, it is hard to conceive how the minimum standards can pose a serious problem in the prosecution of stalking. In the end, it all comes down to the extent to which the court is convinced either way.

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585 See, for example, Rb 's-Hertogenbosch 29 april 2009, *LJN* BI2417; Rb Zutphen 8 mei 2009, *LJN* BI3308; Rb Groningen 26 november 2009, *LJN* BK5503.

586 See, for example, Rb Zwolle 24 juni 2009, *LJN* BJ2244.

8.4. Stalking and double jeopardy

As mentioned before in Chapter 7 Section 4.2.6, the relation of stalking to other crimes raises some issues, one of which is the problem of double jeopardy. In many instances the stalking is not only restricted to otherwise innocuous behaviour, but it expands to behaviour that meets the definition of another statutory offence as well. Systematically intruding upon someone's privacy will regularly involve crimes such as assault, intimidation, or vandalism. Stalking can therefore consist of both acts that are already criminalised independently of Article 285b DCC and acts that would not constitute a crime if it were not for the systematic fashion in which they are carried out.

Although the initiators misleadingly suggest that the stalking provision was specifically tailored to counter acts that were not already covered by other offences,[587] this should not be interpreted in the sense that Article 285b DCC only applies to the sum of the otherwise non-punishable acts. Machielse rightly remarks that this would result in the unjust situation that someone who systematically performs a pattern of acts which in themselves are not criminal faces a higher maximum penalty than he who systematically threatens his victim with the most serious of crimes.[588] Because stalkers often employ criminal acts against their victims as part of their harassing course of conduct, distinguishing between the criminal parts of the sequence and the total of non-criminal components is 'artificial'.[589] It is therefore preferable to consider *all* acts against the victim in the light of the stalking case.

Whenever stalking coincides with other crimes, drafting a compounded indictment can be the appropriate course of action. In that case, the public prosecutor not only charges the suspect with stalking, but also with whatever crime will match (parts of) the factual description of what happened. The indictment can take the form of a cumulative indictment *(cumulatieve tenlastelegging)*, in which the suspect is accused of two or more crimes simultaneously, or a so-called principal-alternative indictment *(primaire-subsidiaire tenlastelegging)*: the prosecutor aims at a conviction for stalking, but if for whatever reason the evidence falls short of procuring a conviction, the suspect may at least be convicted for a second or a third offence that was also charged.[590]

The consequence of including every act in the indictment is that after a final judgment on the stalking, it is no longer possible to prosecute the suspect for the other offences again. Conversely, crimes that have been judged upon or that have been settled earlier can no longer play a role in a subsequent stalking case. The prohibition to prosecute or punish a person twice for the same act is expressed in the rule against double jeopardy, in the Netherlands more commonly known as the principle of *ne bis in idem*, laid down in Article 68 of the Dutch Criminal Code.[591] It not only prohibits a second punishment for the same offence, but it also forbids a

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587 *Kamerstukken II* 1998/99, 25 768, no. 7, p. 5.

588 A.J. Machielse, 'Art. 285b', in: J.W. Fokkens & A.J.M. Machielse (eds.), *T.J. Noyon, G.E. Langemeijer & J. Remmelink's Wetboek van Strafrecht*, Deventer: Gouda Quint 2006, supplement 137, note 10 to Article 285b DCC.

589 *Ibid.*

590 Corstens (2008), pp. 566-567.

591 It can also be found in Article 14 paragraph 7 of the IVBPR and in Article 4 paragraph 1 of the 7th Protocol to the ECHR.

second prosecution for the same offence once a final judgment has been rendered by a Dutch criminal court. The same rule applies to offences on which a foreign court has rendered a final decision, albeit that this rule is slightly more limited.[592]

The idea behind the rule against double jeopardy is that, once a person has been convicted or acquitted of a crime, there is no reason for a second judgment, since that person has already paid his dues: *non bis puniri in idem*. Furthermore, a person needs to be protected as much as possible from being prosecuted twice for the same act, because trying him again would imply unnecessary agony on the part of the person involved: *nemo debet bis vexari*. Moreover, the credibility of the administration of justice benefits from the constraint against double punishment. If a second judge would be allowed to turn his attention to the same acts as his colleague before him, the authority of the administration of justice would be at stake. After all, the second judge can only repeat the prior judgment or reach a different conclusion and what gives this judgment more authority than the first one? Finally, criminal procedures should come to a close at a certain point in time: *lites finiri oportent*. Society would be disrupted if an old case was reopened again and again.[593]

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592 Article 68 paragraph 2 DCC prohibits the prosecution of a person once he has been acquitted or the criminal charges against him have been dismissed by a foreign court, but the prosecution in the Netherlands of a person convicted of a criminal offence by a foreign court is nevertheless permitted, unless this person has already undergone the punishment imposed by the court or unless the time limit for the execution of the sentence has elapsed.

593 All these arguments can be found in J. de Hullu, *Materieel strafrecht. Over algemene leerstukken van strafrechtelijke aansprakelijkheid naar Nederlands recht*, Deventer: Kluwer 2009, pp. 514-515. See also G.J.M. Corstens, 'Non bis in eundum hominem', in: M.S. Groenhuijsen & J.B.H.M. Simmelink, *Glijdende schalen. Liber amicorum J. de Hullu*, Nijmegen: Wolf Legal Publishers 2003, pp. 95-109, at pp. 98-99; G.J.M. Corstens, *Het Nederlands strafprocesrecht*, Deventer: Kluwer 2008, p. 205; A.A. Franken, *Het zelfde feit. Over samenloop van strafbare feiten en het non bis in idem-beginsel*, Nijmegen: Ars Aequi Libri 1995, p. 11; F.A. te Water Mulder, 'Herziening ten nadele van de vrijgesprokene: een inbreuk op het ne-bis-in-idembeginsel', *Delikt en Delinkwent* (50) 2008-7, pp. 710-723. Van Hattum explains that the rationale of *ne bis in idem* is to achieve a balanced criminal procedure with an outcome that matches the requirements of justice and legal certainty. Justice means that the outcome of the procedure is acceptable to society and legal certainty refers to the protection of the individual against arbitrary prosecution and the existence of a stable administration of justice (W.F. van Hattum, 'Strafproces en feitsbegrip of Hoe de inrichting van het strafproces de uitleg van de regel *ne bis in idem* kleurt', in: B.F. Keulen, G. Knigge & H.D. Wolswijk (eds.), *Pet af. Liber amoricum D.H. de Jong*, Nijmegen: Wolf Legal Publishers 2007, pp. 117-135 at p. 118).

Due to the double jeopardy rule the public prosecutors are sometimes confronted with some interesting dilemmas:

1) What should they do when an act is brought to their attention that – although part of the stalking sequence – constitutes a crime in itself? Should they prosecute the offence at hand or should they wait and strengthen the stalking case?
2) What can they do if a court acquits a suspect of stalking, because too few incidents were proven to establish the necessary systematic fashion, and the stalker continues after the acquittal? Can the old acts that in themselves could not lead to a stalking conviction be supplemented by the most recent incidents and then be used again in a new case?[594]

8.4.1. Double jeopardy before trying stalking

As to the first situation, the public prosecutor can either choose to save up all the acts – including the criminal offences – and present the court with a complete picture of the stalking or he can choose to immediately react whenever an offence comes to his or her attention. Something can be said for both options. On the one hand, accumulating all facts can help build a stronger case of stalking, on the other hand, the swift settlement or the quick prosecution of certain criminal components may have an immediate deterrent effect on the stalker. Years of criminological research have shown that one of the determining factors that can help prevent recidivism is the speed with which the government reacts to crimes: the quicker the reaction, the greater the odds of deterring future criminal behaviour. An ideal solution would therefore be to be able to use the same fact twice: once for the prosecution of stalking and again for the prosecution of another crime. Is it possible to interpret Article 68 DCC in a way that enables this without violating the rights of the accused?

The litmus test in interpreting Article 68 DCC is determining what constitutes 'the same offence'. A complicating factor in this respect is that the term has been defined differently over the years.[595] In 1961, the Netherlands Supreme Court ruled that, although the rationale of two statutory definitions can differ,

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594 A third, but probably more theoretical, dilemma is when the stalker victimises more than one victim through the same behaviour and the victims file a complaint at different points in time, for example, a family that is terrorised by the systematic noise, insults, and threats of a neighbour. If the father files a complaint which leads to a final judgment, can the other family members, who have been equally victimised, file a complaint against the same behaviour afterwards? The situation is theoretical, because often the stalker will employ different acts against different victims (see, for example, Rb Haarlem 13 oktober 2008, *LJN* BF8740) and if the acts coincide, the victims will probably file a complaint simultaneously. In practice, the complaints of all family members will probably be combined in a cumulative indictment and the stalker will be charged with 'stalking repeatedly committed'. This situation can be compared to the one in which one traffic incident kills multiple people (Article 6 of the Road Traffic Act *(Wegenverkeerswet)*). According to the Supreme Court, this can be labelled a case of concurrence of offences (HR 25 november 1980, *NJ* 1981, 170, with commentary by ThWvV.) By one (set of) act(s), the stalker violated the interest that Article 285b DCC aims to protect multiple times, namely, of more than one victim.

595 For an overview on the way in which the interpretation in the Netherlands has varied from broad to narrow to broad again, see Van Hattum (2007). Her hypothesis is that the interpretation of double jeopardy – and more specifically of the phrase 'the same offence' – is connected to the organisation of the criminal procedure in general.

in view of the relationship of the behaviours, that have been made punishable in both provisions, both punishable acts can be committed under circumstances which show such a connection concerning the simultaneousness of the behaviours and the substantial relationship in the performance and in the culpability of the offender that the purport of Article 68 DCC entails that he for whom on the account of a violation of one of both provisions a final decision has been rendered in the sense of this Article, cannot be prosecuted again on the account of violating the other provision.[596]

Several criteria can be derived from this formulation.[597] First, there is the criterion of simultaneousness: when different acts are performed consecutively, it is not 'the same act' in the sense of Article 68 DCC. The Supreme Court, however, interprets this requirement relatively broadly. Under circumstances, acts that take place at different points in time can still be 'the same act' as long as they can be considered to be part of one body of acts.[598] Obviously, for a continuing offence such as stalking, that is by definition characterised by an aggregate of acts spread over a certain period of time, this criterion is easily fulfilled. As long as the date of the occurrence of the particular offence falls within the time frame of the indicted stalking, the simultaneousness criterion will be met.

Next to simultaneousness, there has to be a substantial relationship in the performance and in the culpability of the offender. This requirement can be split up into two components: the factual situation (factual or casuistic component) and the applied statutory definitions (legal or normative component).[599] The factual component, which concerns the circumstances under which the offense has been committed, can be illustrated by the Joyriding II case.[600] In this case the suspect had driven the car of his aunt without her permission (joyriding, then Article 37 of the Road Traffic Act *(Wegenverkeerswet)*), while he was furthermore not in the possession of a driver's licence (then Article 9 of the Road Traffic Act). The latter incident had been settled by the Public Prosecution Service by means of an on-the-spot fine. When the Court allowed the public prosecutor to subsequently prosecute for joyriding, the Supreme Court ruled that this was incorrect. The aunt had not given her nephew permission to drive the car precisely because he did not have a driver's licence. This connection between the absence of permission and the absence of a driver's licence was decisive in assuming 'the same act' within the meaning of Article 68 DCC.

The legal component relates to the requirement that the rationales of the different statutory

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596 My translation of HR 21 november 1961, *NJ* 1962, 89 with commentary by Röling (*Emmense bromfietser*): '[…] gelet op de verwantschap in de gedragingen, die in beide bepalingen zijn strafbaar gesteld, beide daarin strafbaar gestelde feiten kunnen worden begaan onder omstandigheden, waaruit blijkt van een zodanig verband met betrekking tot de gelijktijdigheid van de gedragingen en den wezenlijken samenhang in het handelen en in de schuld van den dader, dat de strekking van art. 68 Sr medebrengt dat degene te wiens aanzien ter zake van overtreding van een der beide bepalingen onherroepelijk is beslist als in dit art. bedoeld, niet andermaal kan worden vervolgd ter zake van overtreding van de andere bepaling.'

597 See Franken (1995), p. 51; and De Hullu (2009), p. 524.

598 HR 13 december 1994, *NJ* 1995, 252. In this case, the suspect was first convicted for importing drugs into Belgium and later on prosecuted for exporting the same drugs out of the Netherlands.

599 Franken (1995), p. 51; De Hullu (2009), p. 524.

600 HR 17 december 1963, *NJ* 1964, 385, with commentary by WP.

definitions (in this case: stalking and the other offence) should not be too far apart from each other. Although perfect equality is not necessary, there has to be a certain connection between the two provisions in what they are aimed to protect. This connection is more easily assumed than the one expressed in the rules of concurrence.[601] Invoking double jeopardy will only succeed if the applied provisions do not vary substantially.[602] A practical example was the case in which the suspect was convicted of joyriding and then prosecuted for dangerous or disturbing behaviour on a public road during the same trip.[603] Even though both provisions were related to rules of conduct in traffic and even though the suspect had violated the second rule while joyriding, the provision against joyriding did not aim as directly at the promotion of traffic safety as the former rule (it saw to property rights) and the reproach against the offender was of a different nature.[604]

In practice, the judicial requirement that there has to be a connection between provisions is the most important indicator of the applicability of Article 68 DCC. In De Hullu's view, the normative component is the *minimal* basic requirement that needs to be fulfilled first before the other requirements – simultaneousness and factual circumstances – come to play.[605] It is however an abstract test and if the factual unity dominates, then a certain unlikeness in rationale will be taken for granted.[606] Franken also argues that, although the judicial component seems to have gained importance over the last few years, the factual component can still be decisive under certain circumstances. The prosecution of a person for breaking a shop-window (Article 350 DCC) while this person has already been convicted of the burglary that more or less 'necessitated' this vandalism (Article 311 DCC) seems unfair despite the different rationales.[607]

Franken illustrates this point further with the example of a man who received a final judgment for an offence under the Opium Act *(Opiumwet)*. In his opinion, when the man is thereafter prosecuted for having participated in a criminal organisation (Article 140 DCC), the defence counsel of this man would be able to successfully invoke double jeopardy if the actual participation consisted of nothing but the drugs offence. Here – again – the factual component would override the apparent difference in rationale.

This example is of special importance because of the parallel to stalking. Just like stalking, participation in a criminal organisation can be a continuing offence *(voortdurend delict)*, it can coincide with acts that have been made punishable elsewhere in the Dutch Criminal Code, and the rationales of the specific and the 'umbrella' offence can differ. Would prosecution for

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601 Franken (1995), p. 52.

602 The requirement that the rationales of the statutory definitions should not vary 'substantially' can be found in the *Tjoelker* judgment (HR 2 november 1999, *NJ* 2000, 174, with commentary by JdH), although that case did not relate directly to Article 68 DCC but to the related Article 313 DCCP.

603 HR 18 januari 1972, *NJ* 1972, 378, with commentary by C.B. (Joyriding IV).

604 Likewise the selling of cocaine was considered a different offence from having the same cocaine in one's possession (HR 7 april 1981, *NJ* 1981, 399 with commentary by ThWvV) and violating the Trading Hours Act *(Winkelsluitingswet)* is of a different nature and causes a different reproach than simultaneously violating the Licensing and Catering Act *(Drank- en Horecawet)* (HR 29 april 1980, *NJ* 1980, 445, with commentary by GEM).

605 De Hullu 2009, p. 525. If there is doubt whether both provisions are sufficiently connected, the facts of the case also become important.

606 De Hullu (2009), p. 529.

607 Franken (1995), p. 53.

the specific acts count as double jeopardy if the perpetrator had already been prosecuted for participation in a criminal organisation, while this participation consisted of (amongst other acts) conducting the specific offences? Or the other way round: would a prior conviction for the specific offence rule out a later conviction of the umbrella offence?

In a related judgment, the Supreme Court ruled that, even though the rationale of Art. 140 DCC (participation in a criminal organisation) is different from the one of Art. 225 DCC (forgery of documents), the circumstances may show such a connection that the principles of due process would also preclude that this person is prosecuted twice.[608] To illustrate this point, the Supreme Court gave two examples of cases in which there would be such a connection:

1) If 'participation' in the indictment for Article 140 DCC is described in a sense that this participation (also) consisted of commiting the specific offence of Article 225 DCC, that is subsequently indicted separately in a renewed prosecution for Article 225 DCC, or

2) If the court has accepted the charges for Article 140 DCC also on the basis of certain specific acts of the suspects and these acts are then included in a second indictment for Article 225 DCC.

Because of the inclusion of the word 'also' this rule is even more far-reaching than the aforementioned example of Franken. In the opinion of the Supreme Court, the second indictment does not have to consist of the previously indicted facts alone to be in contrast with Article 68 DCC, but even a partial overlap should result in the prosecution being barred. De Hullu concludes that in case of a significant resemblance (in the indictment) between the general Article 140 DCC and the more specific offences, double jeopardy can form a barrier to a second prosecution.[609] When translated to stalking, this judgment would imply that despite the possible – and in case of stalking even probable – divergence in rationales, the more specific offences which can be part of a stalking sequence cannot be prosecuted separately on another occasion.

It appears as if the Supreme Court has created a difference between the coincidence of 'incidental' offences, where the rationale is the decisive factor, and the coincidence of a continuing offence with an incidental offence, where the body of facts is of overriding importance. The question is why. The answer may be that both situations can be distinguished in the sense that, in the case of two incidental offences that happen simultaneously (for example, the joyriding in combination with dangerous driving) the two acts can be separated from each other, whereas in the case of a continuing offence with an incidental offence, the incidental offence (e.g., intimidation) forms part of the continuing offence (e.g., stalking). On the basis of the two aforementioned examples,[610] it is plausible to assume that it is precisely this difference

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608 HR 26 november 1996, *NJ* 1997, 209. Here the principles of due process were invoked instead of Article 68 DCC, because there had not yet been a final decision: the case evolved around a so-called 'catch up indictment' *(inhaaldagvaarding)*, but it stands to reason that the same considerations would apply to Article 68 DCC as well (De Hullu 2009, p. 527, note 197).

609 De Hullu (2009), p. 527.

610 HR 26 november 1996 (*NJ* 1997, 209).

that made the Supreme Court decide on a deviant approach. However, does this difference justify the Court's decision? Especially in the light of the emphasis that is nowadays placed on the legal component, this change of heart is puzzling.

The fact remains that the rationale behind the various offences (e.g., protection of property rights, protection of physical integrity) that can make up a case of stalking is clearly different from the rationale behind the anti-stalking provision itself (i.e., protection against systematic invasions of the privacy) and so can be the reproach against the offender (e.g., the lesser offence status of clandestine camera surveillance (Art. 441b DCC) in comparison to the offence of stalking).[611] The consequences of a systematic intrusion upon someone's privacy transcend that of two or more incidental acts. Even if the stalking only consisted of 'intimidation, repeatedly committed', there is a difference between being threatened on more than one occasion and being threatened in such a systematic fashion that it becomes stalking. The 'core of the injustice' lies in the systematic harassment of the victim.[612] A single telephone call can and should be endured, a single act that constitutes an offence can be tried under the heading of that specific offence, but stalking consists of acts that become deserving of punishment due to their duration, their intrusiveness, and their frequency. It is this permanency that creates a constant threat or nuisance which makes life miserable for victims, and it is this permanency that justified punishability in the first place. The difference in rationale and reproach can be expressed in allowing the accused to be tried again.

In order for this to work, certain limitations need to be kept in mind. These have to do with the sequence of the two indictments. If the more serious offence is tried first, this would obstruct the subsequent prosecution of a lesser offence that is more or less absorbed by the first, whereas the reverse (the lesser offence first, followed by the more serious offence) would be conceivable.[613] In the first situation, the penalty for the lesser offence is already covered by the penalty for the stalking. To avoid double punishment, Article 68 DCC should not be invoked if sentence has already been passed for the stalking.[614] In the second situation, double punishment can be avoided if the court takes the previous penalty into account in the later decision. An example can illustrate this point. Where a court would impose a more severe penalty in a stalking case that involved serious threats than in a case without serious threats, there it can take this fact into account and mitigate the penalty it originally had in mind if the threats have been liable to punishment in an earlier stage.

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611 De Hullu mentions circumstances such as the statutory maximum sentence, a classification as lesser offence or crime *(overtreding of misdrijf)* and the distinction between an intentional and a culpable offence *(opzet- of schulddelict)* as possible indicators for a different reproach (De Hullu 2009, p. 529).

612 Groenhuijsen (1998), p. 523.

613 Also B.F. Keulen, 'Ne bis in de revisie?', in: M.S. Groenhuijsen & J.B.H.M. Simmelink (eds.), *Glijdende schalen. Liber amicorum J. de Hullu*, Nijmegen: Wolf Legal Publishers 2003, pp. 267-290, at p. 288. Corstens, however, seems to interpret this situation in the same way as the situation in which the general offence is tried first (Corstens 2008, p. 211).

614 Perhaps this is exactly why the Supreme Court has applied a different standard to cases of organised crime: the situation in which the more specific offence is tried first, followed by separate prosecution on the basis of Article 140 DCC has not occurred yet (De Hullu 2009, p. 527, note 198).

8.4.2. Double jeopardy after trying stalking

As regards the second situation – that of reusing old acts that previously did not lead to a conviction – a different argumentation is needed. On the basis of Article 350 DCCP, a court has to take four subsequent decisions. It will have to decide on the following questions:

1) Are the acts mentioned in the charge proven?
2) Do the acts constitute a statutory criminal offence?
3) Is the accused criminally liable?
4) What sentence shall be imposed?

Here a distinction must be made between the situation where the court in the first case was not convinced of the occurrence of certain acts (question 1) and the situation where the incidence of the acts are beyond dispute, but where the court judged the acts not systematic enough to justify conviction for stalking (question 2). If the court acquits the accused of stalking, because the acts proven did not make up a *systematic* invasion of the privacy, this does not automatically mean that it doubts the fact that the accused nevertheless posted outside the schoolyard of his children, that he contacted the victim by phone on several occasions or that he called the victim names.

When the stalker continues the harassment after acquittal, Article 68 DCC dictates that the old acts that in themselves could not qualify as stalking cannot be used anew for a second indictment.[615] This is unfortunate, for it is very well possible that the court might change its mind as to the systematic fashion of the behaviour if the old facts are complemented later on by new acts. Still, if Article 68 DCC is taken as a 'principle, a point of departure'[616] and since a casuistic approach is necessary,[617] then there is no objection to holding the rule against double jeopardy against the stalking light.

The two suspect-related principles behind double jeopardy (no double punishment, no double prosecution), do not raise that many objections against reusing certain acts. First of all, the principle that prevents double punishment is not at stake here. There is no risk of the stalker being punished twice, for if the court has acquitted the accused, there was no punishment in the first place. No dues were paid.

As regards double prosecution, it follows that there is no objection against using old acts again if the suspect would be prosecuted for stalking anyway, even without those acts. In that situation the old facts are merely used to *strengthen* a case that has already begun or that would begin regardless of those facts, not to *enable* prosecution. This argument, however, would probably be untenable in practice, for how can a court be wure whether a case against a stalker primarily rests on old acts or new ones?

But even if this line of thought is taken one step further and a case without sufficient evidence is allowed to go to trial – the old acts become pivotal to the second prosecution –

615 Article 68 DCC relates to all the questions of Article 350 DCC, including the legal classification.

616 De Hullu (2009), p. 515.

617 De Hullu (2009), p. 533.

there is still no need to abandon the idea entirely. The question then is whether the (legitimate) expectations of the accused are really harmed by a second trial. To what extent can a suspect who has previously been acquitted of stalking because there were too few incidents of a certain nature be justified in expecting that a second prosecution will not follow if he or she persists in contacting the victim? The accused is already aware of the former accusations and of the fact that the previous trial only failed because of there not being *sufficient* incidents. The accused furthermore knows that certain incidents have been declared proven in the context of criminal proceeding. Should his or her expectations be honoured if the accused has willingly accepted the risk of a new trial by continuing the harassment? Perhaps there are indeed expectations on the part of the accused, namely expectations in the fact that the criminal justice system is unable to intervene, but this is not a type of expectation that should be acknowledged.

As for the final principle, the principle of *lites finiri oportet*, it could be argued that, basically, the first case has been closed. This case is not reopened, nor is the previous judgment subject to revision. What happens is that a new trial begins which is partially based upon old evidence, but this is something that is entirely dependent on the behaviour of the accused. It is within the power of the alleged stalker to make sure that there is no need for these old facts to be used again. But even if the new case is seen as a mere continuation of an old battle, then it remains to be seen which solution causes the greatest social upheaval: that of allowing certain cases to be 'reopened' or that of allowing stalkers to continue their harassment.

8.5. Conclusion

Victims are no longer merely seen as witnesses. Over the years, society has become more open to their needs as well, which has resulted in the creation of various victims' rights at different levels. Even though not all the needs of stalking victims have completely crystallised out (e.g, proper treatment) and although some are not supported in the sense that they are considered rights (processing time of cases), others are widely acknowledged and the ones that are not still serve as ideals that should be pursued. In the first Section it was shown that the police and the Public Prosecution Service are no longer free to treat the victims any way they see fit. The right to information, the right to proper treatment, and the right to protection are all codified in multiple regulations, and the criminal justice system can be held accountable for not living up to these standards.

When it comes to the minimum standards of evidence, the exact opposite is happening. There the rules are interpreted so leniently that they hardly pose a problem for the police and the Public Prosecution Service. One statement supported by a single piece of corroborating evidence can already suffice to meet the minimum standards. Whether this satisfies the court's inner conviction is a different story.

Finally, a casuistic approach to the term 'the same act' in Article 68 DCC is inevitable for the criteria as formulated by the Supreme Court do not have clear boundaries and they may be interpreted in different ways. It is arguable whether the Supreme Court made the right choice in opting for a different approach in cases of continuing offences. The emphasis on the body of acts instead of on the rationale of the various offences has faced the public prosecutors with a diabolical dilemma with respect to stalking: either prosecuting the specific offence when it

occurs or waiting to build the stalking case. The mere difference that the continuing offence covers the incidental offence does not justify the deviant approach, since the impact of stalking transcends its constituent acts. The rationale behind the other crimes and the crime of stalking are dissimilar and therefore they are different in the sense of Article 68 DCC.

If a court has acquitted an accused of stalking, because the acts proven did not make up the required systematic fashion, it should be possible to use these acts anew in a second trial. The principles behind Article 68 DCC do not necessarily preclude such an interpretation.

Just as in the case of a review of a judgment at the expense of the acquitted, there is tension here too, between legal certainty for the accused (and society) on the one hand and justice for the victim (and society) on the other. The question which interest should prevail is a normative question and ideas on which solution is the best may vary. In this chapter, it was argued that a creative interpretation of Article 68 DCC should not automatically be dismissed and that further contemplation on the subject is needed.

Meanwhile, regardless of the outcome of this thought process, in the case of stalking, it would clearly be incorrect to keep the victim waiting if there has been a threat or an assault that in itself is serious enough to warrant prosecution. The victim should not be made to endure any more offences against his or her privacy just for the sake of building a stronger stalking case. Public prosecutors are therefore advised to act as soon as a criminal incident occurs irrespective of the consequences for the stalking case.

PART IV
ALTERNATIVE ANTI-STALKING MEASURES

Chapter 9

the effectiveness of private investigation and private security

9.1 Introduction

Having explored the effectiveness and the pragmatic and other advantages and disadvantages of criminal justice interventions, let us now focus on assessing an approach that was adopted in 2005 by the Dutch Crime Fighting Foundation *(Stichting Criminaliteitsbestrijding Nederland* – hereafter: SCBN), an organisation that calls in private investigation and security agencies to handle stalking cases.

SCBN was established at the end of 2005 by two private investigators who (in their capacity as private investigators as well as) in their former jobs as public servants had come across various stalking cases and who had noticed from their files the remarkable difficulties with which stalking victims had to deal. Not only were the police often unable to intervene because of the lack of apparent evidence, many victims were also on the verge of a financial, legal, and social break-down. Sympathising with these victims, SCBN tried to map the different aspects of stalking and, after acquiring a certain expertise on the topic, it developed an approach to stalking that would be more effective than the regular legal interventions. SCBN itself estimated that the protocol it had developed – the so-called AORTA protocol – could end the stalking in 85% of the cases.

Besides ideas to reduce stalking, SCBN also developed initiatives to minimise several of the negative consequences caused by stalking, for instance, by removing libellous messages from the internet and helping victims sue for damages. The aim of this comprehensive approach was to 'make life a little easier for victims of stalking' and it is this approach that will be the focus of the following section.

After a brief description of SCBN and its approach to stalking, the effectiveness of hiring private protection and investigation agencies will be assessed by means of an explorative file study of cases that had been dealt with by this foundation in the years 2005 to 2007. Section 9.5 reports on the methodology and the results of this study. The remaining sections deal with the legitimacy of the approach. Deploying private investigative techniques and hiring private protection is not without controversy. Section 9.6 looks at the main objections against private investigation.

9.2. The Dutch Crime Fighting Foundation (SCBN)

9.2.1. History

In March 2005, the employees of a private investigation and protection agency investigated the possibilities to counter stalking and to provide other useful services to victims of stalking. The research mainly focused on the development of a standardised procedure that could be employed during a longer period of time and that was applicable to multiple *modes operandi*. The ultimate goal was to 'stop the perpetrator(s) of stalking and/or substantially restore the victim's joy in life by means of a quick intervention'.[618] Especially the latter goal required more than repressive measures alone. Financial hardship, psychological damage, and legal difficulties required other measures in addition to the repressive ones directed at the perpetrator. Accordingly, the final protocol combined repressive with financial, legal, and empowering measures.

Owing to the need to obtain national coverage and to qualify for financial grants, the anti-stalking activities were taken out of the commercial agency and accommodated in the newly established Dutch Crime Fighting Foundation, which had set itself the target of 'actively lending support to persons, institutes, and organisations victimised by criminal activities'. The foundation's philosophy is to actively render support to victims of crime through repressive interventions. Whereas SCBN aims at fighting crime in general, stalking remains one of their core targets.

9.2.2. Organisational structure [619]

The organisational structure of SCBN encompasses one central office registered in Zaandam that is supported by three regional offices. Underneath this basic structure lies a network of related organisations and parties to which the foundation can subcontract cases if necessary. Examples of related parties are forensic labs, private security companies, private investigation agencies, law firms and debt collection agencies. Each party has its own specialisation and can be called in depending on the services required by a certain case, so that a tailor-made approach can be offered. The central office supervises the intake of cases, it assigns cases to the related parties, and it monitors the quality of the services provided by these related parties. Local cases, complicated cases, and cases that are very sensitive – for example, when celebrities are involved – remain entirely within the central office. In short, the foundation generally functions as a distributing and supervising mechanism that occasionally engages in operational fieldwork.

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618 These goals are expressed in *S.B.I.C.K.*, an unpublished prospectus by the former Dutch Security Agency. Most documents quoted in this chapter are originally in Dutch and the quotations were translated into English by the author, unless stated otherwise.

619 This was the situation in 2007 when the study took place.

9.3. General information on the approach

9.3.1. The intake

SCBN advertises on the internet and by word of mouth, and victims are referred to it by Victim Support Netherlands. Victims interested in the foundation's services can contact the foundation by e-mail or phone or they can download a form from the foundation's website on the basis of which the investigators ascertain whether the victim's case falls within the foundation's scope. After this preliminary selection, the foundation contacts the victims and an intake takes place. The client and the investigators meet in person in the foundation's central office, but sometimes other locations like the client's work place or neutral territory are used. The intake aims at clarifying what sort of assignment is concerned, what the ultimate goal of the investigation is, under what conditions the investigation has to be conducted, and what the financial consequences are. In consultation with the client a plan of action is drawn up.

The criteria for acceptance of a case by the foundation are relatively easily met. In principle, whenever there is a suspicion of a criminal act that falls within the scope of the foundation's focus – i.e., it has to do with stalking, libel, threat, and the like – and the victim is willing to pay the costs, the investigators will take on the case. One additional requirement is that the victim does not initiate any contact with the perpetrator. This implies that cases in which it is necessary for the victim to engage in contact – for example, when legal procedures are pending between ex-partners concerning alimony, child custody, or parental access – will not be dealt with by the foundation unless these procedures have reached the final stage.

After the intake, a quotation is submitted to the client describing the complaint, a plan of action, and the maximum costs. The client has the opportunity to reflect on the offer for approximately five days before he or she has to return a signed contract. If additional methods and, consequently, additional costs are deemed necessary in the course of an investigation, the client will be asked for permission again. The foundation always requires a percentage of the money in advance, to avoid the risk of default or non-payment. After this money is transferred, the actual investigation commences.

Many cases do not proceed past the intake stage, because the victim does not sign the contract. The directors believe that the main critical factors for a victim to refrain from involving the foundation appear to be the financial costs and the fear of retaliation by the suspect. Another reason for withdrawal might be that the intake takes away most of the victim's concerns already. Perhaps the practical advice given during the intake and the reassurance of people who specialise in fighting stalking may take away the most irrational fears of the victims.

9.3.2. the AORTA protocol

The AORTA protocol consists of five phases within which victims – theoretically – should be liberated from their stalker.[620] Phase one ('protection') aims at technically and, if necessary, physically protecting the victim from attempted advances by the perpetrator(s). In this way the victim can calm down or the peace within an organisation can be restored. This phase includes the intake of the victim and the notification of the police. It can also include referring the victim to Victim Support Netherlands and the application of technical devices and/or physical protection of the victim. Phase two ('investigation') aims at collecting evidence for a possible civil and/or criminal law procedure. This phase includes the basic check of the perpetrator's personal particulars through (semi-)public sources and – if necessary – a more in-depth investigation. The third ('repression') phase is directed at implementing measures to force the perpetrator to stop the unwanted conduct. Depending on the suspect's reaction, this phase can include sending one or more notifications to the alleged perpetrator, initiating a personal interview of the investigators of the foundation with the stalker, taking security measures, starting an observation, and filing a report with the police. After the stalker has ceased his harassing behaviour, the technical and physical monitoring of the activities of both the victim and the perpetrator takes place in phase four ('monitoring'). During this phase, various controlling techniques are deployed to guarantee that the stalker abides by the new situation. In the final ('completion') phase, the file is rounded off administratively, legally, and financially. These five phases will be elaborated on in the following sections. What follows is a description of the AORTA protocol as it is envisioned on paper; the actual performance of the foundation in the various cases will be described in Section 9.5.

9.3.3. Protection

In literature, it is often emphasised that stalkers employ numerous tactics to torment their victims and that it is therefore such an illusive conduct. The AORTA protocol, on the other hand, is based upon the theory that stalkers only have a limited range of options at their disposal to come into contact with their targets, making it relatively simple to protect the victim. All means of telecommunication are, for example, comparatively easy to control. Phone lines can be redirected, e-mail addresses can be changed, and e-mails can be screened before they reach the victim. The same goes for letters and unsolicited packages. If one way of communication is monitored, this stimulates the stalker to either stop or divert to other means, forcing him or her to leave behind a trail of evidence. If, in the worst case scenario, the stalker resorts to more serious conduct, like following the victim around or physically harassing this person, more serious protective measures are taken. Where the foundation usually keeps a low profile when the stalker only stalks by using means of communication with an eye to evidence collection, the more invasive conduct can justify a more visible protection, e.g., through personal protection of the victim by a bodyguard.

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620 This was the *status quo* on 16 April 2007. In Dutch, the first letters of the keywords of the five phases, namely, *Afscherming*, *Onderzoek*, *Repressie*, *Toezicht*, and *Afronding*, form the acronym AORTA, hence the name of the protocol.

9.3.4. Investigation

Usually, the starting point of each investigation is desk research which consists of an examination of public and semi-public sources, like the internet, the Chamber of Commerce, or the insolvency register *(faillisementsregister)*. The investigation phase begins with a basic check of the personal particulars of the suspect. Any relevant data, like debt collection procedures, telephone numbers, ownership of real estate, credit applications, legal notices, moving information, and company information are looked into. It depends on the reaction of the suspect to the notification and the sufficiency of the evidence that is already provided by the victim whether an additional investigation is necessary. In that case, corroborating evidence can be generated by a range of investigative methods like the use of technical devices, handwriting analysis, DNA tests, or other techniques. Research methods that can be deployed are: static or ambulant observation, use of technical devices (video and photo cameras, tapping telephone lines, placing microphones), forensic blood or dactylographic researches, infiltration, the use of informers, etcetera. In general, the most effective, least expensive, and least invasive methods are opted for. The foundation tries to gather as much evidence as possible to be able to successfully report the crime to the police. Some stalkers, however, when confronted with the evidentiary material, automatically cease the harassment. In the case of an anonymous stalker, the research phase is of even greater importance, since a stalker can only be dealt with if his or her identity is known.

9.3.5. Repression

A first measure to stop the stalking is sending a notification. The law requires that the suspect is informed of the fact that he or she is being subjected to a private investigation, but this notification does not necessarily have to take place before any investigative acts have been performed. Despite the legal leniency, the notification is generally sent at an early stage of the procedure, right after the basic check of the perpetrator but before the more in-depth investigation. Besides the wish to obey the law, the foundation discovered that a notification alone can already prevent continued stalking and thus works as a deterrent in itself. Furthermore, important clues on the identity of the stalker can be derived from the reaction to the notification: a sudden decrease of anonymous letters can show that the suspect is indeed the alleged stalker. Next to the announcement of the investigation, the notification also clarifies under which criminal provisions the suspect's behaviour could be categorised, which legal steps will be taken, and what damages may be recovered from him/her, and it simultaneously serves as a summons so that the suspect refrains from engaging in any further contact with the victim. Before the notification is sent to the suspect, it is first submitted to the victim for approval.

Immediately after the notification is sent, three possible reactions have been observed. First, the stalker refrains from any contact whatsoever from the moment he or she receives the letter. This change in behaviour can increase the suspicion against the stalker and can serve as evidence. Secondly, stalkers contact the foundation and try either to convince the investigators of their innocence or to prove to them the legitimacy of their actions by blaming the victim. In

the experience of the investigators, a role-reversal can be witnessed in the majority of the cases in the sense that the stalker takes on the role of a victim. By claiming to be merely reacting to the abhorrent behaviour of the so-called victim, they try to convince the investigators to focus their efforts on the misconduct of the victim instead. Thirdly, the letter could mark the beginning of a 'revenge period' in which the situation escalates and the stalker starts making threatening phone calls to the foundation or the victim. According to an estimation of the two directors of the foundation, one half of the stalkers who had received a notification called the foundation, but often that phone call was their last stalking act. Many stalkers seem to prefer to stop and shy away from retaliatory activities. In extreme cases the stalker can pay a visit to the foundation's office or the victim's house. Although actual visits by the stalker to the office have been rare – in fact, only one stalker came to the central office to complain – the period after the issuance of the notification warrants extreme caution on the part of the foundation. In accordance with the law, the police are notified of the investigation and, if required, the victim is referred to Victim Support.

The use of repressive measures depends on the reaction of the perpetrator. Often the notification provides a sufficient incentive to make the suspect stop, but sometimes ending the stalking is not so simple. Talking to the stalker in person, hiring a bodyguard, sending in debt-collection agencies, filing a report with the police, and initiating a civil (interlocutory) procedure can further discourage the stalker. In theory, the foundation can provide maximum observation, security, and support to the victim and the victim should be released from criminal activities within 80 hours after the intake.[621] Instead of applying the anti-stalking measures at the same time, a more phased approach is used by administering the measures one by one. Which measure is given preference depends on the reaction of the stalker and the particulars of the case.

9.3.6. Monitoring

This phase, which is no longer bound to a period of time, consists of random checks by the foundation of the behaviour of the perpetrator through various controlling techniques. The aim is to check whether the stalker complies with the rules as laid down in the notification or the restraining order and to control the situation. In general, the monitoring is executed by contacting the victim to check whether he or she has been experiencing stalking tactics after the repressive phase has been concluded. Mental support of the victim is paramount in this phase. Gradually the foundation withdraws from the case and transfers the command of the situation back to the victim. If the stalker does not desist, the case will go back to one of the previous phases. The foundation has a policy never to give up on a case before the stalking ceases completely. The most obstinate cases can consequently last for years before they are officially closed.

621 This – rather optimistic – estimation can be found in the unpublished prospectus of the Foundation (S.B.I.C.K.).

9.3.7. Completion

The entire procedure is concluded by the termination of the investigation, the settlement of damages, and the prevention of a repetition of events. The foundation is now almost entirely withdrawn from the case and it only takes care of the legal settlement of the damage suffered by the victim, if the victim wishes to be compensated. They can try to claim damages from the Criminal Injuries Compensation Fund *(Schadefonds Geweldsmisdrijven)* or from the stalker. A security counsellor can advise the victim as to how to prevent the same events from happening again in the future and, if the victim wants to, he or she can take self-defence or assertiveness courses. Maximum support by social workers and psychologists may be deemed necessary. Depending on the wishes of the victim, the investigation is sometimes concluded by a written report of the most important findings.

9.4. The costs

Unfortunately, this comprehensive approach does not come without a price tag and this is one of the most substantial disadvantages of private investigation and protection. Although the foundation is set up as a non-profit institution, which only charges the actual costs, it still asks a personal contribution for each case. The contribution is also established in order to prevent the victim from dropping out in an early stage. During the pilot phase, when the foundation did not charge anything, victims perceived the entire operation as being free of obligations, which sometimes resulted in a precipitated or thoughtless participation and premature withdrawal by the victim.

The foundation does not work on the basis of a time wage, but it charges a sum of money per project, based on a preparatory assessment of the costs. In calculating the cost price, it charges approximately €47.50 an hour on gross pay, which is reasonable, taking into account that amounts of €110 an hour are more standard in the private security branch.[622] The intervention will not start until the contribution is credited to the foundation's account.

The costs and personal contributions are distributed among the victims according to their ability to pay. Depending on a person's financial capacity and the estimation of the actual costs, these charges can vary from €250 to the actual costs of a case.[623] However, if a case is in need of additional services that were not foreseen during the intake, like legal representation in a civil law suit in order to file for compensation or damages, these costs have to be paid on top of the personal contribution. This amount can increase significantly when certain extreme measures like a DNA test or personal protection are considered necessary. The client can decide beforehand whether he or she is willing and able to pay for these extras. It was estimated that

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622 Again, this is an estimation of the directors of the foundation.

623 If the net monthly income of the victim and his/her partner is less than €1500, the personal contribution is €250. An income between €1500 and €2000 results in a contribution of €350, between €2000 and €2500 in €500, between €2500 and €3500 in €850, between €3500 and €4000 in €1250, and between €4000 and €5500 in €1750. If the net income exceeds €5500, €2250 will be charged. The victim will be offered the possibility to interest-free payment in instalments. The complete costs are charged if the victim has a savings account that exceeds €7500 or if he or she carries on an enterprise. This was the situation on September 28, 2007.

the clients paid an amount of €495 on average, whereas the actual costs of a file vary between €1500 to €2000 in man-hours and additional charges.[624]

An attempt can be made to recoup compensation from the perpetrator for both the material and the emotional damage the victim has suffered in a civil or criminal lawsuit. This includes the personal contribution victims have to pay for the services of the foundation. The recourse may be recovered through either a civil procedure, direct payment by the perpetrator, or a criminal lawsuit, but if the damage cannot be recovered in any of these ways, the Criminal Injuries Compensation Fund *(Schadefonds Geweldsmisdrijven)* can be asked to pay the costs.

9.5. Case file study of the foundation's approach

The AORTA protocol and the labour division as laid down in the internal documents of the foundation was described in the previous sections. In the following sections it will be established whether the foundation's approach works as well in practice as on paper and to give more in-depth information on the working method of the foundation by describing the results of a case file study. Given the scarcity of the literature on the working method of private investigation agencies in general and the complete absence of studies on their workings methods in stalking cases in particular, it was deemed necessary to further investigate this subject with the help of a case file study. The research questions were:

- How does the AORTA protocol work in practice and what working methods are opted for?
- What is the effectiveness of the protocol?

The main objectives of the file study were to establish how the foundation handles stalking cases in practice, how this handling differs from the AORTA protocol as originally envisioned, what investigative and repressive methods are deployed, and how effective these methods are.

9.5.1. Research Method

The files of stalking cases that the foundation had dealt with since its establishment in 2005 until 30 June 2007 were collected and their contents analysed. Only the cases that had been dealt with under the direct supervision of the foundation's main office were taken into account, as were cases that had been outsourced to an external agency, but that could easily be retrieved without having to leave the main office's parameters.

Due to a lack of consistency in the filing system, the initial plan to select cases on the basis of the quotations soon had to be discarded.[625] Where the majority of cases had a paper file that was sometimes supplemented by information on the computer, others existed only

624 This was at least the situation on May 22, 2007, according to one of the directors. The difference was due to the many indigent clients. In order to compensate the costs in the future and to make up for the meagre income as a result of the less wealthy clients, the people who carry on an enterprise will be charged €90 an hour in the future.

625 Especially the period from March 2005 until December 2006 suffers from administrative incoherence connected to the start of the foundation and the irreparable crash of a hard disk that contained information from that period.

digitally or – even more complicated – for some part only in the memory of the people who had handled the case. As a result, information on the cases had to be derived from various sources and information occasionally needed to be supplemented by personal interviews with the investigators. Since the case file study was conducted in June and July 2007 – fairly shortly after the establishment of the foundation – their recollection of most of the cases was fortunately still vivid.

Cases furthermore differed in the extent and manner of the reporting, which varied from a single sheet of paper with hand-written notes to extensively compiled files containing police reports, pictures, and victim and witness statements. It must be borne in mind that the information included in these files had primarily been collected with an eye to intervention. However, in a typical case, information on the sex of both the victim and the offender, their prior relationship, the stalking tactics, prior contacts with the police or convictions of the stalker, the motive behind the stalking, whether a civil restraining order had been imposed, the coping tactics of the victims, the actions by the foundation, the costs of the intervention, and whether their intervention had been successful could be retrieved.

Since the foundation also deals with other crimes, like intimidation, fraud and blackmail, an initial selection of cases was established by screening for the word 'stalking' in the case files. These files were automatically included in the analysis. After excluding the cases that clearly had nothing to do with stalking, a small group of cases remained in which it was not immediately clear whether they could be classified under the heading of stalking or not, because there was no apparent categorisation to be found in the file. It was only after thorough reading and consultation with the investigators involved that these cases were included in the study. The guideline for the selection was the definition based on Article 285b of the Criminal Code which the foundation uses as a selection criterion as well. Sometimes this resulted in the inclusion of cases where it was debatable whether the problem actually concerned stalking or behaviour that – although perhaps related – might not constitute stalking as such. Especially cases that mainly concerned slander, libel or defamation were sometimes difficult to distinguish. For example, in case 22, a vindictive employee falsely accused her former manager on the internet of sexually abusing young female co-workers. Following the libellous accusation, the man received threatening e-mails and telephone calls from various strangers who had read the message on the internet. In the same period his car was doused with a chemical substance. Although the initial behaviour typically qualified as libel, it resulted in the man being stalked by strangers, hence this case was included even though the intervention by the foundation focused on the libel only. In the end, 26 cases were included in the analysis.[626] After an orientation phase to identify the relevant themes and keywords, a coding system was created based on which the information could be assigned to the various aspects of the research questions. The content analysis of the files consisted of closely reading all the selected files by the researcher followed by an interpretive report on the working method and the effectiveness of the foundation.

626 A short summary of all the files can be found in Appendix 6.

9.5.2. Victim and stalker characteristics

In the majority of the cases, the victims were female and the perpetrators male.[627] These findings correspond with those of other studies. However, with ten male victims to sixteen female victims, the proportion of male victims in this study is relatively high compared to other ones. Also, a relatively high proportion of the stalkers preferred to operate anonymously: when the investigators started their investigations, seven out of 26 cases involved an anonymous stalker or multiple anonymous stalkers.[628] Furthermore, with approximately 31% stalkers of the female sex, these files show a contrast with the findings in other studies. This percentage even rose to approximately 38% when the identity of several anonymous stalkers was uncovered.

Similarly to other studies, in a majority of the files (73%), the victim and the stalker were of the opposite sex. Only one case involved same sex stalking, in three cases the identity of the stalker remained unknown, and two cases could not be taken into account, either because research indicated that there had never been a stalker in the first place or because the stalker harassed an entire family.[629] The high proportion of opposite sex stalkers can easily be explained by the prior relationship between the victim and the stalker, for over fifty percent (58%) involved heterosexual ex-partners.[630] Approximately one quarter (23%) of the victims was stalked by an acquaintance, the others were either stalked by strangers, or the relationship with their stalker was unknown either because of the anonymity of the stalker or because the stalking turned out to be non-existent.[631]

The motive behind the stalking was unsurprisingly often related to love, hatred, or a combination of the two. The stalkers desired to restore a romantic relationship, they wanted to take revenge – often after the relationship had soured – or they wanted to restore the relationship and take revenge at the same time. Another motive for stalking appeared to be an (alleged) claim to an amount of money or an argument over child custody, often in combination with feelings of revenge or a wish to restore the relationship.

The stalking tactics that occurred the most were contacting the victim through various means of communication like telephone calls, e-mails, letters, postcards, and MSN messenger. These means were used to proclaim love or to utter (death) threats. One stalker even threatened

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627 The group of victims consisted of ten men, fourteen women, one lesbian couple, and one family. Of the perpetrators, eleven were male, eight were female, and seven were anonymous, at least at the start of the investigation. After research by the foundation, one anonymous perpetrator turned out to be a man, two were female, one was an innocent next-door boy, and only three stalkers managed to retain their anonymity despite the foundation's efforts.

628 Case 6 actually involved two stalkers. One was the ex-partner of the female victim; the other was an anonymous stalker that turned out to be the new girlfriend of the ex-partner. SCBN only investigated the anonymous stalker.

629 Cases 1-4, 7-14, 16, 18-20, 23, and 25-26 involved stalkers of the opposite sex. Same sex stalking appeared in case 6, although initially a man was suspected. In cases 5, 15, 17, and 22, the stalkers remained anonymous and two cases could not be classified. One case could not be classified because an entire family was stalked (case 21), the other because there appeared to be no stalker to begin with (case 24).

630 The cases involving an ex-partner are 1-4, 7, 9, 11, 14, 16, 18-20, 23, and 26.

631 (Ex-)work related stalking took place in cases 10 and 8. Acquaintances were involved in 6, 12, 21, and 25, with the latter case actually involving a celebrity who was stalked by a fan. The victims in cases 22 and 13 were stalked by strangers and – due to the anonymity of the stalkers – the victim-stalker relationship in cases 5 and 15 remained unknown. In case 24, there appeared to be no stalker at all.

with rape. The relatives, current partners, or employers of victims were also threatened. Furthermore, hurtful libel was often used as a means to take revenge, but some even resorted to physical assault, vandalism, the distribution of nude photographs, and even the kidnapping of a victim's pet. One female stalker (and mother of the male victim's son) eventually even completely disappeared with her son without giving the father notice of their whereabouts. It is safe to conclude that many cases involved serious stalking which even caused several victims to seek refuge outside their homes, to report to the police, or to look for psychological support.

9.5.3. The AORTA protocol in practice

9.5.3.1. Protection

When comparing practice to theory, it appears that some stages of the AORTA protocol were given more attention than others. Although the AORTA protocol is based upon the theory that stalkers only have a limited range of options at their disposal to harass their targets, making it relatively simple to protect the victim, the complete safeguarding of a victim against stalking behaviour by, for example, redirecting phone lines, screening e-mails or letters before they reach the victim, was usually not aimed for. In the past, there had been a case where personal protection of the victim by means of a bodyguard was deployed and once the foundation had used a special voicemail to relieve the victim (and to collect evidence), but our sample included none of these or other protective measures. This can partly be explained by the importance that is attached to the collection of evidence and the priority that is given to repressive measures. Victims will have to put up with the fact that they will (temporarily?) have to endure some more stalking incidents during the intervention.

Although the victim is not entirely protected from the stalker, the foundation did seem to pay attention to damage control in the sense that the victim is protected against some of the negative consequences of the stalking. In two cases in which the stalker had placed libellous messages on the internet, the foundation had contacted the webmasters in charge of the website to ask them to remove the libellous information.[632] In one of those two cases, they had also mediated between the victim and her employer when she was suspended because of the libellous e-mails. After an explanation of the situation by the foundation, the employer put the woman back to work again.[633] In the case of the director of a religious foundation whose image was severely damaged because of the libellous allegations of domestic violence, the investigators wrote a rectifying e-mail to all the religious foundation's contributors who had received a letter from the stalker.[634] Finally, when a female victim was in danger of not receiving a testimonial from her former housing cooperation – she had neglected to pay the rent in time due to the stalking – the foundation's mediation resulted in the certificate being provided after all.[635]

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632 Cases 13 and 3.

633 Case 13.

634 Case 10.

635 Case 20.

9.5.3.2 Investigation

Unsurprisingly, investigation together with repression turned out to be the core of the foundation's intervention. Although the investigative methods can theoretically be distinguished from the repressive ones, chronologically these two phases are intertwined rather than divided. Investigation is alternated with repression and much depends on the reaction of the stalker. In the investigation stage, there was an important difference between cases that involved a known stalker and those that involved an anonymous stalker. With anonymous stalkers, the foundation necessarily started with an investigation in order to identify the perpetrator.[636] Measures like analysing the handwriting, tracing an IP address, installing a camera in front of the victim's home and having an investigator stake out for some hours are identification techniques that were used in these cases. Some of the anonymous cases are amongst the most labour-intensive the foundation has dealt with. Despite a DNA test, repetitive observations of the victim's house, interviewing possible witnesses, analysing the handwriting of letters, and a carefully planned distribution of notifications to possible suspects, for example, the foundation was still unable to positively confirm the identity of the anonymous stalker in case 5.[637] In general, these cases required more labour-intensive and consequently more expensive investigative methods than cases in which the stalker's identify was known. Once the perpetrator's identity was, the investigators generally followed the standard procedure again.

9.5.3.3. Repression

In cases involving a stalker whose identity was known, this standard procedure started with basic desk research followed by a notification to the stalker that his or her behaviour was under investigation and that the foundation would press charges and claim damages if he or she continued to behave in a harassing manner.[638] Besides informing the suspect of the investigation, the notification often served as a deterrent in itself. In 8 out of 26 cases, the stalkers ceased the harassment after the receipt of a notification without the foundation having to resort to additional measures. Sometimes it took several notifications to get the message through (case 8).[639]

If the notification failed to provoke any positive results, traditional investigative methods were employed to build a case against the stalker, sometimes in preparation of filing a report with the police or to start a civil interlocutory procedure, at other times to confront the stalker with the gathered evidence. Methods like observation, recording phone calls, installing a camera, analysing the handwriting of the stalker, and interviewing witnesses or other people

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636 Cases 5, 6, 8, 15, 21, and 24 concerned anonymous stalkers. In case 22, that involved several anonymous stalkers, no attempts were made to identify the stalkers, since it was considered more effective and efficient to put an end to the libel that had caused the stalking.

637 This case was a good example of the use of a notification as a device to help identify the stalker. When thorough investigation had narrowed the possible suspects down to only three people, the investigators sent a notification to each of these suspect with an interval of several weeks to see whether it had any influence on the stalking.

638 In cases 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 23, 25, and 26, a notification was sent.

639 In cases 3 and 13, they also sent multiple notifications, but this did not put an end to the harassment.

who might be of any help appeared in the case files. This phase of evidence collection was often followed by contacting the police or by filing a report against the stalker.[640] Another option was the referral of the case to a related law firm,[641] or a personal conversation with the stalker to try and change the offender's perspective.[642]

In case 7, in which the stalker remained inexorable and the police remained indifferent, the foundation started a civil interlocutory procedure against the stalker, which turned out to be successful. The stalker, who had defied several notifications and who had continued to stalk even after a personal conversation with the investigator in charge, did comply with the restraining order that was imposed.

Certain exceptional cases required more creative solutions, for example, in the case where a father suspected that one of his sons (A) together with his wife and two children were being stalked by the other son (B) and his partner. Despite the fact that the numerous threats and the placing of the pictures of the victim's children on sex websites proved a significant burden on his family life, son A was reluctant to undertake action to stop the harassment. Tired and frightened, he preferred to avoid a confrontation by seeking shelter in his own home and withdrawing from social life. The father was in a quandary: on the one hand, he saw family A being destroyed as a consequence of the stalking; interference, on the other hand, was likely to damage his relationship with son B. The stakes were high and it was only with the utmost caution that the foundation set out its strategy. At first it performed an investigation to identify the person posting the threats on the internet. After all, the father only had his suspicions. Thanks to the investigation, they were able to establish that the person behind the threats was son B's partner, a woman who suffered from borderline personality disorder. More importantly they could rule out son B as the evil genius behind it all. After this discovery, they proceeded by initiating a meeting between the father and son B with one of the employees of the foundation present to mediate between the two to try to find an amicable settlement. Son B, who had never engaged in any stalking actions himself and who had not the slightest idea of his girlfriend's misbehaviour, was shocked when confronted with the evidence. He promised to have a word with his girlfriend and to keep a close guard to ensure she would refrain from stalking activities in the future. This arrangement turned out not only to be very effective – family A has not heard from the woman ever since – but it also kept the family relationship intact.

Another illustrative case of an extraordinary solution was the one where a wealthy man was being harassed by his former girlfriend (case 18). After they broke up, she called him continuously, she sent him text messages and she did everything she could to remain within his immediate vicinity. Since they had been long-time friends, even before their romance began, the man desired to stop the intrusive conduct without destroying their friendship. A notification in his name would probably damage their relationship altogether so another approach was sought, one where the man could stay anonymous throughout the procedure. An assessment of the case led the investigators to the conclusion that the woman probably had too much time on her hands and that a regular job might distract her enough to keep her from stalking her ex-

640 In cases 19 and 23, the police was contacted. In cases 3, 7, and 10 a report was filed against the stalker.

641 Cases 13 and 16 were at the moment of the file research dealt with by a law firm.

642 Case 25 (case 7 as well, but this was less successful).

lover. However, being a person who suffered from borderline personality disorder and had been convicted twice already for similar behaviour, it was difficult for her to find employment. The investigators decided to contact the woman under the guise of being social workers who were assigned to help convicted sufferers from borderline personality disorder to look for a job. After they had gained her confidence and helped her find a job, she ceased harassing the victim.

9.5.3.4. Monitoring

A sophisticated system of monitoring the stalker's behaviour that consists of random checks by the foundation through various controlling techniques as advertised in the AORTA protocol could not be verified. In none of the files, any reference to monitoring could be found, but judging from the account of one of the directors, the monitoring is generally executed by means of one or two phone calls to the victim some time after the repressive phase has been concluded to check whether he or she has experienced any stalking lately. It is assumed that the victim will contact the foundation as soon as the stalker reappears and until that happens: no news is good news.

9.5.3.5. Completion

The entire procedure is concluded by the termination of the investigation, the settlement of the damage, and the prevention of a repetition of events. The foundation has now almost entirely withdrawn from the case and it only takes care of the legal settlement of the damage suffered by the victim, if the victim wishes to recover the costs. The directors claim that most clients felt such relief at being released from the constant attention of their stalker that they did not wish to spend any energy on recovering the costs. Whether this is true could not be checked, because in the files of the foundation, no information was found on the percentage of victims who did or did not want their money back.

Only three cases were found in which a compensation for damages was sought. In case 3, the foundation tried to recover the costs from the perpetrator but this scheme backfired. This request was not only denied, the victim also had to pay a sum of €600 for the legal costs of the stalker. Despite the fact that the judge did have the 'suspicion that something was going on', she refused to award damages to the victim.[643]

A request to the Criminal Injuries Compensation Fund is less risky from a financial point of view, so this was attempted in two other cases. Whereas the victim in case 6 was awarded €1500 for the damage she had suffered, the victim in case 5 was less fortunate. Although the claim form indicated a considerable negative financial and psychological impact on the victim, the committee was of the opinion that there was not enough evidence to prove threat or repetitive harassment.

Finally, the case files make no mention of security counselling, courses in self-defence

643 The investigator in charge blamed the failure on the fact that the civil court appeared unfamiliar with the phenomenon of stalking and the fact that the victim's counsel was too inexperienced with these types of cases. Whether these assumptions are correct could not be controlled for.

or a referral to social workers or psychologists. Whether these measures were not deemed necessary, for example, because the victim did not need mental counselling, or whether they were considered matters of secondary importance in comparison to the 'core business' investigation and repression could not be determined.

9.5.4. The effectiveness of the AORTA protocol

The case files in the current study showed that, in the period from December 2005 until June 2007, in 12 out of 26 case files, the perpetrators stopped entirely after (and probably due to) intervention.[644] Six cases were still ongoing at the time the file research was finalised, but in three of those cases, the stalking has become less frequent.[645] Two cases were stopped by the victims themselves prematurely, in one case the stalking stopped spontaneously before the foundation could intervene, in one case there appeared to be no stalker at all, and in four cases it is unknown whether the perpetrator has stopped altogether.[646]

As for the effectiveness of the intervention in the long run, not one single case dealt with by the foundation had witnessed a regression in the sense that the perpetrator recommenced his or her stalking behaviour.[647] Therefore, leaving aside the two cases which were discontinued by the victims themselves, the one case which stopped spontaneously and the one in which there appeared to be no stalker to begin with, and keeping in mind the definition of an effective intervention – i.e., the stalking becomes less frequent, the stalking tactics become less invasive, and/or the victim feels better – an effectiveness of 68% could be reported. This percentage might even show a further increase with the outcome of the four cases in which it was too soon to tell whether the stalker would ultimately desist. If this result could be verified by quantitative research, it would imply a very reasonable effectiveness in cases of stalking.

The underlying mechanism behind the effectiveness of the protocol remains obscure and possible explanations for its success are tentative at best. The directors of the foundation attribute the effectiveness to the financial risk the perpetrators run if they continue their unwanted behaviour. In the case files, the stalkers were seldomly confronted with a request for payment of the foundation's services or a compensation of damage, but perhaps the financial warning in the notification has a deterrent effect. Many stalkers of the foundation's clients own cars, houses, a bank account, and have a job. In other words: they have something to lose and they will think twice before putting everything at stake.

Furthermore, the fact that their behaviour has become more public now, while many stalkers prefer to operate anonymously may be an important contributing factor. In the investigators'

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644 Cases 1, 3, 4, 6, 7, 8, 9, 11, 14, 18, 21, and 25.

645 Cases 5, 12, 13, 15, 16, and 26. In cases 5, 12 and 16 the stalking became less frequent, but it did not stop entirely.

646 Case 2 and 17 were stopped by the victims themselves, in case 22 the stalking stopped before the foundation could intervene, and in case 24 there appeared to be no stalker at all. As to cases 10 and 19, although officially closed, it is too recent to tell whether the perpetrator will keep his or her promise to the police. Although action towards the stalker in case 19 was mainly undertaken by the police, the victim did report feeling better since the foundation had taken an active stand in her case. She felt that she was being taken seriously and that – thanks to the foundation – the police took her more seriously. In case 20, it remains to be seen how the man will react once he gets out of prison. Case 23 was handed over to the AIVD *(Dutch General Intelligence and Security Serice)*.

647 At least this was claimed by SCBN during an interview with the two directors on 30 March 2007.

experience, stalkers wish to operate in the 'twilight zone', without many people knowing of their conduct so the fact that the foundation brings their affairs out in the open perhaps incites them to stop the harassment.

Finally, the name and reputation of a foundation or a private investigation and security agency that will not hesitate to use private security measures could also be of relevance. The method with which police officers and lawyers operate is standard and familiar to many citizens, but only a few have personal experience with private security companies, so fear of the unknown might explain part of the foundation's success. Due to the unfamiliarity with and the current lack of transparency of the phenomenon, the imagination of the stalker might even attribute illegal working methods to private investigation and protection agencies, such as the risk of being physically beaten up.

However, if fear of the unknown would actually turn out to be one of the underlying motives for stalkers to refrain from future contacts with their victims, this could result in an interesting paradox: The more successful private agencies become and the more widespread their involvement in stalking cases, the more stalkers will know about the working method of this sector and the more they will be able to calculate what (financial and other) risks they run by pursuing their course of action. These risks may not be impressive enough to deter certain stalkers. The fact that the only attempt to recover money from the perpetrator by the foundation in a private law suit failed could indicate that the financial risks are not as high as suggested by the notification. Furthermore, in only three cases, a stalker was reported to the police and two cases were brought before a civil court so the danger of having to stand trial seems moderate as well.

Although the foundation's claim that the more serious cases of stalking can be brought to a solution more quickly than others may seem puzzling at first, it can easily be explained. When the stalker displays many or serious stalking acts, it is easier to gather evidence and to initiate legal procedures. The few cases that involved anonymous stalkers generated much larger files and they took a long time to investigate matters. In the case of serious misconduct, the police and the public prosecutor are furthermore more likely to take action and a conviction is more easily procured, whereas the less obvious cases created room for uncertainty and victim blaming.

9.5.5. Other findings

A finding that emerged not only from the case file study but from personal observations as well is that clients are generally treated with respect and they are being taken seriously despite their sometimes exaggerated demands. The foundation is willing to go to great lengths to satisfy its customers.

For example, when a woman contacted the foundation through the telephone and told the investigator that she was reluctant to disclose her story because she feared that their conversation was being overheard by the stalker, the investigator created a secured website especially for her. During the intake that followed – an intake which the author was allowed to attend – the stories told by the woman were so incredible that it seemed as if she was suffering from some kind of paranoid delusion. For instance, even when the investigator explained that it

was highly improbable that her mobile phone was being tapped – the necessary equipment is very expensive as well as highly illegal – she persisted in her suspicions. To meet her wishes, the investigator suggested to install a video camera in her apartment facing the door. In this way she could verify whether somebody had actually broken into her apartment during her absence or whether this was just a fit of her imagination. Although he had serious doubts as to the accuracy of her stories, the main thing was to make the woman feel safe again in her own home.[648]

An example that derives directly from the case file study is case 8. This 44-year-old woman had received threatening letters, postcards, e-mails, and telephone calls by an anonymous stalker for one year when she contacted the foundation. The victim had contacted the police, but instead of providing her with help, they had advised the woman to look for psychiatric help. Although the investigators of the foundation did notice that the woman came across as 'rather unstable', they decided to take on the case nevertheless. After the identification of the stalker, it took two notifications to end the harassment. It is self-evident that part of this respect towards the clients is caused by the commercial attitude of the foundation, but in cases like this one, this attitude proved to be beneficial for the client.

9.5.6. Limitations

Since relatively few cases could be investigated thoroughly, data about the intervention offer no more than preliminary indications. Nevertheless, the file study suggests that the involvement of a private security and investigation agency can have a positive effect on stalking. A very reasonable success rate was found that deserves further study. It remains unclear whether the explanation for this success lies in the use of a notification, the intense investigation into the identity of the perpetrator, the active evidence collection, the unfamiliarity of the stalkers with private investigation, the flexibility and creativity with which cases can be approached, or a combination of these all factors. Apart from the reduction of the stalking, the clients' satisfaction may sometimes also have been enhanced by the aftercare and the efforts undertaken to remove several of the negative consequences. These and other variables could not be tested in the current, explorative study. However, the protocol as such seems promising, to say the least. In the following sections, the reconcilability of the promising protocol with the questionable legitimacy of the private investigation industry in general will be explored.

9.6. The legitimacy of private investigation

As depicted above, the foundation involves various actors in its attempts to counter stalking, ranging from Victim Support volunteers to law enforcement officers. However, the measure that is most likely to be open to criticism from a legitimacy viewpoint is undoubtedly their use of private protection and investigation agencies. The private security industry will therefore be

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648 During the intake, however, she expressed the fear that a camera might not be sufficient since 'trained monkeys' might be able to enter her apartment through the window and mess up her apartment despite the camera. After the intake, the woman was never heard of again.

the exclusive focus of attention of the following sections. In fact, an even further narrowing is made to the private *investigation* industry only. Because of the significant difference between private protection and private investigation – with the private protection organisations generally operating in reaction to a certain conduct and private investigation agencies in a proactive manner – both phenomena can be objected to on different moral and legal grounds. Private investigation, however, seems to be the most controversial (see Section 9.7.3.) and it is also the industry that the foundation makes use of most.

9.6.1. Definition private investigation agency

In Article 1 of the Private Security and Detective Agencies Act (hereafter referred to with the Dutch abbreviation *Wpbr*, *Wet particuliere beveiligingsorganisaties en recherchebureaus)*, a private investigation agency is defined as 'a natural person or legal entity who, as a regular occupation or business on a professional basis, performs investigation enquiries, to the extent that those enquiries are carried out at the request of a third party in connection with the interest of that third party, which concern one or more specific natural persons'.[649] Investigation activities are very concisely defined as 'the collection and analysis of data'.[650] Private investigation agencies perform investigation in the private domain under the authority of a client. Usually these clients request an investigation to bring to light certain facts or circumstances that are (potentially) damaging to them or otherwise wrongful.

The private security sector has witnessed a steady growth during the past decennia, both in size and in types of investigation.[651] Although it is hard to calculate the exact increase of the sector, the number of persons registered as a detective over the years 1994 to 1998 had doubled from 303 to 619.[652] Even more impressive numbers were published by the annual 'sector scan' commissioned by the Private Security and Investigation Organisations Association (*Vereniging van Particuliere Beveiligingsorganisaties en Recherchebureaus)*. It was estimated that in 2008, a total of 30,700 people were working in the Dutch security sector generating a turnover of no less than €1.43 billion; sales had increased by 10.2% compared to 2007.[653]

9.6.2. Regulation and quality control

In response to the growth of the sector, there has been a recent increase of specialised legislation to prevent disproportional breaches of privacy and to guarantee a certain quality of services. The statutory law and regulations that currently apply to the private security and investigation sector are made up of the Private Security and Detective Agencies Act *(Wet*

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649 Article 1(f) *Wpbr.*

650 Article 1(e).

651 P. Klerks & M.E. Smeets, *Particuliere recherche. Uitbreiding van de reikwijdte van de wet?*, Apeldoorn: WODC 2005, p. 10.

652 Klerks & Smeets (2005), p. 24.

653 This Sector Scan can be found at <www.vpb.nl> (Ontwikkelingen in de beveiligingsbranche. Branchescan Particuliere Beveiliging 2008, Breda: Heliview Research 2008).

particuliere beveiligingsorganisaties en recherchebureaus, hereafter: *Wpbr)*,[654] the Private Security and Detective Agencies Regulations *(Regeling particuliere beveiligingsorganisaties en recherchebureaus)*,[655] the Private Security and Detective Agencies Circular *(Circulaire particuliere beveiligingsorganisaties en recherchebureaus)*,[656] and the Private Investigation Agencies Privacy Code of Conduct *(Privacy gedragscode sector particuliere onderzoeksbureaus)*.

Investigation agencies have a responsibility in the prevention of crime and their work affects different interests. The idea behind the *Wpbr* was to protect these interests by means of a permit system. Persons and organisations falling under the definition are required to obtain a permit from the Minister of Justice before they start carrying out investigation or security activities[657] and the permit is only granted if the applicant meets certain demands of reliability and competence as laid down in Article 4.[658] The police have special powers, for example, the authority to enter the premises of the agency, to enforce the rules laid down in the Act.[659]

The *Wpbr* provides the general framework for the regulation of the private security and investigation sector; further details are to be found in the Private Security and Detective Agencies Regulations and the Private Security and Detective Agencies Circular. However, since the duty placed upon investigation agencies in Article 23a of the Private Security and Detective Agencies Regulations to implement a Privacy Code of Conduct is of greater importance from the viewpoint of legitimisation, the Regulations and the Circular will not be discussed here and the focus will be on the Code of Conduct instead.

9.6.3. The Personal Data Protection Act and the Privacy Code of Conduct

The legislator acknowledged that both the collection and the processing of the collected data may violate some of the fundamental rights of the person under scrutiny. Since private investigation agencies process personal data in the course of their business, it is important that such data be handled with proper care and be treated as confidential. Prior to the requirement in Article 23a of the Regulations, private investigation agencies already had to comply with general law, i.e., refrain from engaging in criminal acts or committing wrongful acts, the rules as laid down in the *Wpbr*, and the Personal Data Protection Act *(Wet bescherming persoonsgegevens* – hereafter: the *Wbp)*. The latter is meant to safeguard the privacy of natural persons with regard to the processing of personal data.[660] Although the general statutory framework, existing case law, and background studies provide rules and guidelines as to the permissibility

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654 Wet particuliere beveiligingsorganisaties en recherchebureaus, *Staatsblad* 1997, 500.

655 Regeling particuliere beveiligingsorganisaties en recherchebureaus, *Staatscourant* 1997, 237.

656 Circulaire particuliere beveiligingsorganisaties en recherchebureaus, *Staatscourant* 1999, 60.

657 Article 2 paragraph 1 *Wbpr*.

658 Performing investigative activities without the permit is liable to punishment (Art. 1 Economic Offences Act *(Wet op de Economische Delicten)*. In principle, the permit is valid for five years (Art. 4 paragraph 4 Economic Offences Act) but it can be withdrawn at any time, for example, if the applicant acts in breach of 'what may be expected of a private investigation agency in the normal course of business' (Art. 14(e) Economic Offences Act). An agency in violation of the law can also be punished by the imposition of an administrative fine with a maximum of €11,250 (Art. 15(1) Economic Offences Act).

659 Article 11 under 1 and 3.

660 *Wet bescherming persoonsgegevens* of 6 July 2000, *Stb.* 2000, 302.

of certain investigative tools and methods, their norms were not considered specific enough for the private investigation sector.[661] Therefore, a model Code of Conduct was drawn up which clarified and elaborated on the exact rights and duties of the investigation agencies under the *Wbp*. It describes exactly what private investigators are allowed to do and, more importantly, what they are not allowed to do.

After the Dutch Data Protection Agency *(College Bescherming Persoonsgegevens)* declared that the rules in the Code of Conduct constituted a proper extension of the *Wbp*, the Minister of Justice made it mandatory for all investigation agencies requiring a permit.[662] From that moment on, private investigation agencies had to draw up a Privacy Code of Conduct consistent with the model code that was appended to the Private Security and Detective Agencies Regulations. The Code of Conduct can be summarised by three basic rules concerning data collection and data processing:

1. *The private investigator must act in accordance with the law.*

Article 6 of the *Wbp* states that personal data may only be processed 'in accordance with the law and in a proper and careful manner'. The Code of Conduct elaborates that the private investigation agency industry has to refrain from the unlawful collection of personal data and that certain provisions that govern the data collection method need to be observed. In other words, private investigation agencies may not process any data if they have acquired that data using illegal methods or means. For example, the rules as set out in Articles 139a to 139f of the Dutch Criminal Code – on unlawfully intercepting and recording of conversations or the unlawful recording of images – apply to the acts of a private investigation agency. Although the rights and obligations of each citizen also apply to private investigation agencies, an even higher standard of care can be expected from the latter category given their profession.[663]

2. *The private investigator is allowed to do what the client is allowed to do.*

The second basic rule entails that investigative options that are at the disposal of the client can also be deployed by the private investigation agency. The type of client is an important determinant of the boundaries within which the investigation agency has to operate for 'in terms of options to be used when undertaking an inquiry, a private investigation agency operates as the extension of the client and in effect utilises the enquiry options at the client's disposal'.[664]

3. *In both the collection and the processing of data proportionality and subsidiarity must be the leading principles.*

The third basic rule finally prescribes that, in the collection and processing of data, proportionality and subsidiarity must be the leading principles.[665] The principle of proportionality

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661 Code of Conduct Appendix 6 under 1.7.

662 *Stcrt.* 2004, 7. Recently a new version of the Code of Conduct was approved by the Dutch Data Protection Agency (Goedkeuring van de Privacygedragscode sector particuliere onderzoeksbureaus van de Vereniging van Particuliere Beveiligingsorganisaties van 28 oktober 2009, *Stcrt.* 2009, 16215).

663 Code of Conduct Section 7.

664 Code of Conduct Section 4.2.

665 Article 6 and Article 8(f) Personal Data Protection Act.

means that 'a breach of the interests of the person under investigation must not be in unreasonable proportion to the purpose sought in processing'. Subsidiarity requires 'that a check be made to see if the purpose that processing the personal data is designed to serve cannot be attained by means less detrimental to the person under investigation'.[666] In other words, after a private security agency has established a justified interest for the client to initiate an investigation, it will have to continually make a balanced assessment based upon the principles of proportionality and subsidiarity between the client's interest and the fundamental rights and freedoms of the person under investigation. At all times, the least invasive investigative method or tool should be applied in the least invasive manner.

Compliance with and controls of the aforementioned principles is guaranteed by keeping meticulous records and by notifying to the Data Protection Agency of the investigation. If private investigation agencies act in accordance with this framework, the data processing is in principle legitimate and in accordance with Article 6 *Wbp*, unless the courts decide otherwise.

9.6.4. Problems with the legitimacy of private investigation

Although the phenomenon of private protection and investigation in the Netherlands dates back to the period before World War I,[667] the legitimacy of its existence and working methods is by no means self-evident. Whether deserved or not, the private security, and particularly the private investigation sector, suffer from a certain stigma. It is even said that, forced by their activities and lack of formal competences, the agencies, bona fide and otherwise, 'per definition all fiddle about in the margins of legality'.[668] Despite some efforts to improve this image,[669] the sector still suffers from a bad reputation. The observation that the private investigation branch and the laws and regulations governing private protection and private security are rather obscure,[670] combined with the fact that empirical evidence suggests that private investigation agencies sometimes utilise dubious investigation techniques[671] only intensify the distrust.

A closer look at the relevant literature (see below) reveals that the main problems with private investigation agencies are represented by the following assumptions: a) private investigation agencies conduct investigation activities in the sense of criminal investigation and should be

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666 Code of Conduct, Section 5.3.

667 For a summary of the history and legislation of private protection and investigation in the Netherlands, see C. Fijnaut, 'Bedrijfsmatig georganiseerde particuliere opsporing en (het wetboek van) s/Strafvordering', in: M.S. Groenhuijsen en G. Knigge (eds.), *Dwangmiddelen en rechtsmiddelen. Derde interimrapport onderzoeksproject Strafvordering 2001*, Deventer: Kluwer 2002, pp. 689-749. See also P. Klerks, M. Scholtes & C. van Meurs, *Particuliere recherche in Nederland. Werkwijzen en informatiestromen*, Lelystad: Koninklijke Vermande 2001, pp. 7-8.

668 Fijnaut (2002), p. 729.

669 Klerks et al. (2001), pp. 10-11.

670 Even after several studies, the structure of the market remains opaque, not only for outsiders but also for the parties involved (Klerks et al. 2001, p. 41).

671 Van Kralingen & Prins, for example, confirmed that the rumours of a so-called 'old boys network' – a network where private investigators, often former police officers, illegally exchange criminal information with the police – were true (R. van Kralingen & R. Prins, *Waar een wil is, is een weg?*, Den Haag: SDU 1996).

regulated accordingly, b) even if they do not engage in criminal investigation in a formal sense, private investigation agencies are still allowed to use investigative techniques that the police are only allowed to use under strict conditions, and c) even if private investigation agencies are not allowed to use certain investigative techniques, they use them nevertheless.

9.6.4.1. Criminal investigation in the formal sense?

Over the past few years, the police and the special investigative service *(bijzondere opsporingsdienst)* have witnessed an important curtailment of their powers and methods of investigation. Owing to the IRT affair – a public scandal in the 1990s on the use of questionable investigative techniques by the police – a system of checks and balances was implemented. In requiring the prior consent of a public prosecutor or an examining magistrate before every special investigative act (e.g., test purchase, systematic observation), the system is unique in its thoroughness. In practice, this has led to the refusal of investigative methods in certain cases. Private investigators, on the other hand, are not bound by these regulations. Discontent with this discrepancy between private and public investigation, several scholars have argued that the activities as deployed by private investigation agencies directly fall under the definition of criminal investigation and should be regulated accordingly.[672]

To answer the question of whether private investigation agencies are involved in criminal investigation and whether they, as a consequence, can be brought under the scope of special laws designed to regulate criminal investigation, it is necessary to first elucidate what is actually meant by the term '(criminal) investigation'. According to the Code of Criminal Procedure investigation entails:

> (...) the investigation under the command of the public prosecutor as a result of a reasonable suspicion of a criminal act or the planning or execution of organised crimes as described in Article 67, paragraph 1, which, given their nature or connection with other planned or executed organised crimes cause a severe breach of the legal order, with the aim of taking criminal procedural decisions (Art. 132a DCCP) [my translation and italics].

In this definition, the primary goal of criminal investigation can be distinguished, namely, the investigation of criminal facts in order to arrive at *criminal procedural decisions*.[673] However, the orientation on criminal procedural settlement does not necessarily coincide with the goal that private investigation agencies pursue. Their investigative activities are geared towards the collection of data in order to serve *civil* aims and, in the particular case of stalking, the aim is to prevent or repress the stalking. The foundation, for example, desires to 'stop the perpetrator(s) of stalking and/or substantially increase the joy in life of the victim by means of a quick intervention'.[674] So apart from the preference for a quick intervention, their declaration of

672 For example, Fijnaut (2002).

673 Another option is to choose a criminal *sanction* as the aim of criminal investigation, as the Parliamentary Committee of Inquiry on Investigation Methods *(Commissie Opsporingsmethoden)* did in its own definition of (criminal) investigation.

674 S.B.I.C.K., see note 1.

intent is silent on the manner in which the repression or future prevention should be procured. Pressing charges with the police can be one of the means to arrive at that goal, but there are many others, like the sending of a notification, a one-on-one conversation with the stalker, or a civil lawsuit. In practice, a criminal law procedure even appears to be the measure of last resort. Only if a perpetrator does not react positively to other measures, the foundation reports the stalker to the police, but the majority of cases were resolved by sending a notification to the stalker.

That the foundation's procedure is not exceptional in the private investigation industry as a whole can be derived from the fact that from the estimated 43,200 investigations that all the private investigation companies conducted in 1998, only 613 persons under investigation were reported to the police.[675] A criminal procedural decision is merely one way of putting the stalking to a halt, but since private investigators only sporadically resort to criminal justice, it follows that private investigation does not match the definition of criminal investigation. This is furthermore evidenced by the fact that the additional requirement of public prosecutorial demand is not met.[676] It is fair to conclude that the task of criminal investigation is exclusively reserved to the police and special investigation officers.[677]

Strong corroborating evidence for the assumption that private investigation – at least formally – does not equal public criminal investigation can be found in the Dutch legislation. In contrast to what some scholars believe, the Dutch legislator is rather consistent in its exclusion of private investigation agencies from criminal investigation. First of all, in Articles 141 and 142 Code of Criminal Procedure, private investigators are not listed among the instances that are charged with the investigation of criminal acts. The Explanatory Memorandum to the Private Security and Detective Agencies Act is even more explicit when it literally points out that 'the police are the only agency entrusted with and authorised to conduct the investigation of criminal acts'.[678] In other words, according to the Dutch legislator, the activities of private investigation agencies do not fall within the scope of *criminal* investigation.

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675 F. van Dijk and J. de Waard, *Publieke en private veiligheidszorg; nationale en internationale trends*, Den Haag, Ministerie van Justitie 2001, pp. 13-17. Another study by Schaap (in Hoogeboom et al. (p. 49) in Klerks et.al., p. 25) estimated that companies file a report with the police in 20% to 30% of the cases investigated by private security agencies.

676 The Privacy Code of Conduct too distinguishes between terms and rules that apply to criminal investigators and those that apply to private investigators, because private investigation does not occur under the authority of the Public Prosecution Service and because it serves different aims (Section 7 and p. 24).

677 See also <www.justitie.nl>.

678 *Kamerstukken II*, 1993/94, 23 478, no. 1 and no. 2.

9.6.4.2. Competences of private versus public investigators

Another part of the controversy seems to stem from the fact that public and private investigators use comparable investigation techniques, but that they have to meet different standards. Not all investigative methods are controversial. There is, for example, no statutory difference between the execution of traditional methods like door-to-door inquiries, crime scene investigation, or taking fingerprints by private or public investigators. Those methods are not explicitly regulated for public investigators either, since they do not violate any basic rights, but they fall under the general job description of the police as laid down in Article 2 of the Police Act instead. It is the special investigative methods, like observation, infiltration, and test purchase, where a discrepancy between private and criminal investigation emerges. Because those methods pose a risk to the integrity and controllability of the investigation and because they violate basic rights, the Dutch legislator deemed it necessary to set explicit standards for the police and the prosecution service.[679] The private security sector, however, remained untouched by the legislative interference and as a consequence maintained their latitude. This raises the question of whether 'it is acceptable from the viewpoint of the rule of law to have private inquiry avail itself without restraint of methods that are strictly regulated in the Code of Criminal Procedure in case of regular [i.e., criminal] investigation' and also if 'in this light it would be acceptable that private investigation agencies avail themselves [...] of investigation methods that are just as intrusive as the ones regular investigation agencies use'.[680] In other words: do private investigation practices require stricter regulation or placement under existing regulations for criminal investigation because of the material similarities with criminal investigation? To answer this question, it is necessary to take a closer look at the special investigative methods that are used by private investigation agencies and to the rules that govern these methods.[681]

The Privacy Code of Conduct documents the rules for the various investigative techniques and what attracts the attention is that private investigators do not have that much leeway at all. Many of their competences are based on the voluntary cooperation of third parties (under investigation) or on their explicit permission to use a certain method. If, for example, private investigators wish to interview the alleged stalker or possible witnesses, they have to state their identity, in what capacity they are there, and what the goal of the interview is. Interviews can only be held if the interviewee voluntarily agrees to be interviewed. The interview needs to be recorded (on tape) carefully and if the interviewee desires to have his or her legal counsel present, then this wish should, as a rule, be granted (Section 7.3 Code of Conduct). In comparison, the police are much better off: if there is a suspicion of crime, the public prosecutor can order a police officer to systematically obtain information without revealing his capacity as a public investigator (Art. 126j DCCP), the police can interrogate even the people who do not wish to be 'interviewed' (Art. 539j DCCP) and during the interrogation the suspect does not have a right to have his lawyer present. Granted, the police are obliged to caution the suspect (Art. 29

679 *Kamerstukken II* 1996/97, 25 403, no. 3, p. 3.

680 Fijnaut (2002), p. 720.

681 The following section will only focus on the investigative techniques that emerged from the 26 files and those that are feasible in cases of stalking.

paragraph 2 DCCP), but the right not to answer is also expressed in the voluntariness of private interviews and the prohibition for private investigators of doing anything which can be said to restrict the voluntariness of the interview.[682]

As for the tapping and recording of telephone conversations: private investigators are never allowed to do this, unless the person entitled to the telephone connection has granted permission and only when the person under investigation has committed 'reprehensible and/or criminal acts' (Section 7.7.3 Code of Conduct). The police, on the other hand, can tap phone lines if there is a suspicion of a crime as described in Article 67 paragraph 1 DCCP (serious crimes) which poses a serious threat to society, on the condition that the investigation so requires and that the public prosecutor has granted his permission (Art. 126m DCCP). They are not dependent on the permission of the right holder.

Personal conversations can only be recorded by a private investigator if he participates in the conversation himself or if the private investigator acts on the instructions of a participant to the conversation (Section 7.7.1 Code of Conduct). The police can record personal conversations without participating in the conversations themselves. Again, a suspicion of a crime as described in Article 67 paragraph 1 DCCP and the permission of the public prosecutor are pivotal (Art. 126l DCCP).

Another technique that was used by the foundation was to have the home of the victim observed for some time to see whether the stalker would show up. Section 7.4 of the Code of Conduct states that the more public the surveillance, the lesser the risk of a violation of privacy, and the likelier that surveillance is permitted. If the surveillance is protracted and systematic (e.g., in the case of dynamic following), then surveillance is only allowed under special circumstances. Surveillance of places where the person under investigation should be able to 'be himself without inhibition' is not allowed. The police are allowed to systematically observe suspects as long as there is a suspicion of a crime and as long as the public prosecutor has granted his permission (Art. 126g DCCP). Non-systematic surveillance is already allowed on the basis of the Police Act.

When the private investigator places a camera that faces the entrance of the victim's house in order to catch the stalker, Section 7.5 of the Code of Conduct applies. It states that surveillance with the help of hidden cameras is only allowed if the person under investigation is suspected of having committed reprehensible and/or criminal acts and the surveillance happens occasionally. Usually, the client needs to notify any people under surveillance (for example, employees) beforehand of the possibility of hidden camera recordings. When a prior warning is not possible, the court has to decide whether the recordings were legal or not. In the case where a camera is placed in front of the victim's house without taping the public road, it is unlikely that a claim to privacy on the part of the stalker would be successful. For the police, the same rules as for the systematic surveillance apply, with the addition that the public prosecutor can decide that a technical device is used to aid the observation (Art. 126g paragraph 3 DCCP).

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682 The duty imposed upon members of law enforcement agencies to caution the suspect prior to an interrogation is designed to act as a safeguard against unauthorised pressure exerted by law enforcement agencies and against methods employed to obtain a confession from the suspect that are coercive and go against the suspect's free will (Code of Conduct, p. 28). The same aim can be derived from Section 7.3 Code of Conduct.

As for the special investigative techniques that were not present in the 26 case files, but that are conceivable in cases of stalking (gaining access to non-public areas, tapping of e-mails or mailboxes, research in automated facilities), the private investigator is always dependent on the permission of the person who owns these premises, goods, or facilities (Sections 7.2, 7.7.3 and 7.6 Code of Conduct). So unless the stalker grants his permission to have his mailbox checked or to have his premises searched, these investigative techniques are forbidden ground for a private investigator. The police, under certain circumstances and with the permission of the public prosecutor, can deploy these techniques without the permission of the right holder.

It appears that public and private investigators do have to meet different standards, but whether the balance tips in favour of the private investigator is questionable. The private investigation industry is to a large extent dependent on the permission or the voluntary cooperation of the person under investigation or third parties and, as far as regulation is concerned, they are not the investigative freebooters that literature likes to hold them for. Just like the police, they always have to keep the principles of proportionality and subsidiarity in mind. It is true that the police are 'encumbered' by prosecutorial permission before special investigative techniques can be applied, but after this permission is granted, they are allowed much more than private investigators, especially if we take the means of coercion into account.

9.6.4.3. Excesses in the private investigation industry

Perhaps the biggest problem nowadays lies not so much in the absence of regulation of the private investigation industry, but people are sceptic as to how the rules are applied in practice. In line with the previous section, Hoogenboom admits that the 'normative vacuum' in which the private investigation sector found itself in the beginning of the 1990s has been removed with the arrival of the *Wpbr*, but the overall message of his contribution is still a rather gloomy one.[683] His summary of several developments and themes in the academic research on private security and investigation in the period between 1980 and 2004 starts with the statement that the private security market remains an enigma, due to the lack of systematic research. Incidental case studies of individual companies or sensational incidents, instead of providing a theoretical basis, are of a descriptive nature resulting in a 'knowledge and factual vacuum'. Despite the widespread ignorance, several excesses in the private investigation industry have been observed. Klerks, Scholtes & Van Meurs identified four aspects of private investigation in literature that are considered problematic:

683 A.B. Hoogenboom, 'Met de deur in huis...', in: J.D.L. Nuis et al., *Particulier Speurwerk Verplicht*, Den Haag: Koninklijke Vermande 2004, pp. 9-26.

1) It is unclear what private investigators do, and it is difficult to monitor the methods they use.
2) It is unclear what information is exchanged with whom.
3) Every client willing to pay can call in a private investigation agency to act on his behalf: this could include mala fide clients.
4) Calling in private investigation agencies often results in private justice: possible suspects are not handed over to the Public Prosecution Service, but conflict resolution is established through sanctions like dismissal, compensation or otherwise.[684]

Ad 1) Given the fact that more and more people are questioned and detained by private persons and in view of the assumption that private investigation agencies sometimes deploy dubious or even criminal investigative techniques, the fear arose that the rights and the privacy of the people under investigation could be at risk. The solutions proposed by Klerks et al. to minimise the problems by codes of conduct, a system of licensing with supervision, and forms of self-regulation[685] have now more or less been implemented with the enactment of the Wpbr and the Privacy Code of Conduct. Now attention should be paid to the compliance of the sector and to the enforcement of the rules by the police, for it turns out that there is a world of difference between the law on the books and the law in practice.

A Dutch study has revealed that twenty to fifty private investigation agencies in the Netherlands operate without a permit.[686] It also appears that many agencies circumvent the current legislation and that this legislation is hardly enforced.[687] All respondents, including the organisations that are in charge of monitoring the private investigation agencies, agreed that the supervision is almost non-existent and that the system of permits is not fraud-proof, to say the least.[688]

The researchers that evaluated the compliance of the sector with the Privacy Code of Conduct were not enthusiastic either.[689] The principles of proportionality and subsidiarity are violated in more than half of the investigations (56%), the standard which requires that interviews should be conducted by two investigators or should be recorded on tape is violated in nearly two thirds of the cases and the rules for (camera) surveillance are not observed in approximately a third of the cases. Other standards are violated less often. They estimated that, in more than a quarter of the investigations, one or more standards are violated. The researchers concluded that 'the most important issue with regard to which improvements are necessary is compliance'.[690] Being a self-regulating instrument, the mechanisms behind the Code of Conduct that should stimulate compliance are only weak. The agencies mainly fear sanctions outside the system of self-regulation, such as prosecution or having their licence withdrawn, but they consider the chance of being caught very small.

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684 Klerks et al. (2001), p. 6.

685 Klerks et al. (2001), p. 26.

686 Klerks et al. (2001), p. 85.

687 Klerks et al. (2001), p. 78.

688 Klerks et al. (2001), p. 80.

689 J. Bos, S. Dekkers & G.H.J. Homburg, *Evaluatie privacygedragscode particuliere recherchebureaus*, Amsterdam: WODC 2007.

690 Bos et al. (2007), p. 90.

Ad 2) The boundary between private and public security is said to have disappeared or become blurred.[691] One of the present or predicted negative consequences of this development is the excesses that can corrupt the police or that cause – as Hoogenboom calls it – 'grey policing'.[692] This involves sharing confidential information, moonlighting,[693] and outsourcing 'dirty work' to private detectives and informants.[694] In the last decades, many former police officers, military police officers, and members of special investigation services have pursued a career in the private investigation sector, a phenomenon that is referred to as the 'blue drain'.[695] There are reports of informal and illegal exchanges of information through this 'old boys' network', but there is no empirical evidence whatsoever on the extent of the problem. Not only are the police not allowed to share information with private investigators, it also works the other way round.[696] However, since case law so far holds on to the thought that illegally obtained information brought in by a private party can be used as evidence as long as the police or the public prosecution office were not involved in the collection of the material there are still incentives to act in contravention of this rule.[697] Informal information could form the starting point of a public investigation and turn up in court after having been 'laundered'.[698]

Ad 3) Another problem is that the private investigation industry runs the risk of attracting mala fide clients. It is conceivable, for instance, that stalkers engage private investigation agencies to find information on the victim. Once the agency becomes aware of the true motives of the stalker, it should refuse to cooperate, because starting an investigation would be a violation of Article 8 *Wbp* (also Section 5.3 Code of Conduct). In that case, the client does not have a legitimate interest in the collection and processing of the data. However, if the client successfully deceives the agency, it is possible that an investigation could be performed on a mala fide basis. This, however, is not a sector-specific problem. The police run an equal risk of falling for the lies and deceptions of manipulative stalkers. Making a false accusation with the police, for instance, is one of the stalking tactics that has been observed in practice.

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691 Cohen (1985), Shearing & Stenning (1981; 1982; 1983; 1987), and Marx (1987) in Hoogenboom (2004).

692 Hoogenboom (1991).

693 This involves police officers who work on a freelance basis for private clients.

694 In answer to the 'dirty work' argument, it is important to remark that according to Section 4.2 of the Code of Conduct 'a private investigation agency operates as *the extension of the client*' [emphasis added]. This would take away the possibility of the police hiring a private agency to circumvent the legal requirements of criminal investigation. If law enforcement agents could be rated among their clientele, private investigation agencies would have to adhere to the strict procedural rules that apply to criminal investigators.

695 Klerks et al. (2001), p. 9.

696 Klerks et al. (2001), p. 73.

697 HR 1 juni 1999, nr. 110.367, *Ars Aequi* 2000, pp. 117-121, with commentary by Buruma. Only if the collection of evidence by an outsider would damage the characteristic integrity of the criminal procedure in such a way that it affects the credibility of law enforcement, it may be excluded. This implies that it is possible that illegal evidence will be admissible as long as there was no prior knowledge of or involvement by the government.

698 Hoogenboom refers to this phenomenon as 'information laundering'.

Ad 4) Shearing & Stenning and Marx point out that the balance of powers has shifted from the public to the private sector.[699] Public police tasks have shifted to the private market. Calling in private investigation agencies often results in private justice: possible suspects are not handed over to the Public Prosecution Service, but conflict resolution is established through reactions like dismissal, compensation, or otherwise. From a constitutional point of view, this development may be questionable, but for the victims it is better to have private justice than no justice at all. However, a negative consequence might be that crime is passed on to the financially weak in society, since private protection and investigation come with a price. Only the people with sufficient resources can hire an investigator.[700]

In order to overcome these excesses, certain changes were suggested.[701] Within the police force, privacy officers would be the prime experts to guide the exchange of information correctly and the privacy education of police officers could be improved as well.[702] Another proposal was to increase the attention that is paid to the standards of the Code of Conduct within the education programmes of private investigators.[703] The most important measure, however, appears be to improve the controls and sanctioning of violations of the private investigation regulations. Amongst others, the Private Security Agencies Organisation has observed that the government imposes many rules, without enforcing them because of time restraints and complexity.[704]

9.7. Conclusion

The AORTA protocol appears to be in agreement with Römkens' statement that 'an intervention program for victims of domestic violence and stalking can only be successful if it is based on a proper understanding of the wide range of victims' needs and if the program in its implementation is flexible enough to take this diversity into account'. SCBN seems to navigate the criminal justice system strategically to obtain the benefits that victims need and prioritise. Not the arrest of the perpetrator, but the prevention of further stalking incidents and the quality of life of the victims are the main goals. Next to the tailor-made approach to fit the victim's needs, other advantages are the willingness to investigate even difficult cases, the respectful approach to victims, the attempts to reduce the negative consequences of the stalking, the effectiveness of the notification in particular, and the effectiveness of the approach as a whole. Disadvantages that emerged were the lack of attention for the protection of the victim and the costs of the intervention. Even though the foundation applies a cheap rate and the costs

699 In Hoogenboom (2004). This finding was supported in the report of the Dutch Ministry of Justice (F. van Dijk & J. de Waard, *Publieke en private veiligheidszorg: Nationale en internationale trends*, Den Haag: Ministerie van Justitie 2001).

700 Bayley & Shearing (in Hoogenboom 2001)

701 Klerks et al. (2001), pp. 86ff.

702 Klerks et al. (2001), p. 72.

703 Bos et al. (2007), p. 90.

704 A. van Hoek, *Publiek-private samenwerking in de integrale veiligheidszorg*, Houten: Vereniging van Particuliere Beveiligingsorganisaties 1999.

are distributed among the victims according to their ability to pay, the victim is still charged a personal contribution and recouping the money is highly uncertain.

The objections raised in literature against private investigation were mainly concerned with the legitimacy of the sector. However, the myths that private investigators are involved in *criminal* investigation and that they are at liberty to use any investigative method they see fit were shown to be incorrect. Furthermore, without wanting to marginalise the excesses that have been signalled – the private investigation market, like any market, is likely to suffer from rotten apples – the empirical evidence of many of these excesses is lacking and the extent of the problems may be overrated. Moreover, some problems are not sector-specific (a cunning stalker is also capable of fooling the police) or they exist because the police are willing to share information in violation with their duty of confidentiality. It is unfair to hold the private investigation industry solely responsible for those excesses. To eradicate the established non-compliance with the Privacy Code of Conduct it does seem advisable, however, to enhance controls and enforcement by the police. In addition, solutions must be found for the imminent threat of the gap between those who can afford a private investigator and those who cannot.

Finally, due to market mechanisms and competition the private investigation sector can offer services that the public sector is unable or unwilling to provide. They generally work faster, may have more expertise and – in contrast to their public counterparts – capacity hardly ever poses a problem.

The employment of private investigators to counter stalkers may still raise some eyebrows, but in fact it is not as exotic as it may seem. In the context of the AWARE programme, their expertise is already put to practice and AWARE is even more widely used than the AORTA protocol. It is a collaborative intervention programme between the police and private security companies that has been implemented in at least ten police districts in the Netherlands precisely to overcome some of the issues that were pointed out in Chapter 7. Where the police still hold central responsibility, the private security companies provide the technology. With some improvements to the AORTA protocol and more control over the private investigation sector as a whole, the comprehensive approach certainly has potential in the fight against stalking.

CHAPTER 10

CIVIL RESTRAINING ORDERS

10.1. Introduction

Within the framework of infringements on someone's privacy, like stalking, there has been a development since the early 1980s of a specific kind of provisional decision, namely, the civil restraining order *(straat- en/of contactverbod)*. Some women's shelters already used them already in the 1970s. Yet, the practice to counter stalking-like behaviour through a restraining order did not come up until the early 1980s. In 1982, a working group of feminist lawyers initiated a publicity campaign to recommend the restraining order as a strategic means for women to end the violations of their private life. Many authors perceived them as a better alternative in the fight against harassing behaviour of men than the criminal procedure. In particular the flexibility and the possibility to empower women, instead of making them dependent on the police, were praised[705] and the surrounding publicity was also appreciated.[706] Doomen & Kotting describe several cases in which a restraining order was imposed in those early years:

> In those cases, people behave in a way that is very annoying to others and sometimes even violent. Often the behaviour is not defined in a criminal law provision. The ex-lover who posts in front of the house for hours, who calls in the middle of the night, who follows someone around every day after work is not liable to punishment.[707]

This behaviour would now be considered stalking and would be liable to punishment but, prior to the enactment of the anti-stalking law, the only way to counter this behaviour was to report the aspects of the stalking that were liable to punishment under other criminal provisions, or to try to obtain a restraining order through civil interlocutory proceedings. Initially, the orders started out as prohibitions to enter a certain street, but after a while they expanded to a prohibition to enter a village or neighbourhood, to call or write someone or to have any contact at all with a certain person.[708] The interlocutory proceedings through which civil restraining orders can be obtained will be described in Section 2.

In the past decades, there has been an immense growth in the demand for interlocutory

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705 J. Doomen & R. Kotting, 'Straatverboden in kort geding', *NJB* (60) 1985-4, pp. 109-114.

706 J. Hes & K. van Ringen, *Blijf uit mijn buurt. Het straatverbod in kort geding: achtergronden en rechtspraktijk*, Den Haag: VUGA 1986.

707 Doomen & Kotting (1985).

708 Hes & Van Ringen (1986) even mention examples of restraining orders that required men to move to another area, that prohibited them to live somewhere for a certain period of time, or to study at a certain institute (p. 96).

judgments and the proceedings have become very popular, even though some still consider it to be an *ultimum remedium*.[709] Its popularity is not surprising, given that civil interlocutory proceedings have important advantages in comparison to criminal proceedings. The victim is not dependent on the cooperation of the police, the evidence does not have to meet the same standards, and the entire procedure generally takes up much less time.[710] Next to the obvious advantages, interlocutory proceedings also have certain disadvantages. Domestic violence victims who filed for a restraining order mentioned the fact that the order is 'just a piece of paper', that there are issues with the enforcement of the order, and that the service of the order on the defendant was problematic.[711] The advantages and disadvantages of civil restraining orders will be elaborated on in Section 3.

In section 4, finally, one of the most striking disadvantages of a civil restraining order will be focused on, namely, the financial costs involved. Claimants are confronted with litigation costs that can form a substantial threshold for the initiation of a civil procedure. Especially in cases that require the expertise of a lawyer, the litigation costs are considered problematic.[712] Usually, the legal costs of the person who wins the civil procedure are (partially) compensated by the person who loses *(kostenveroordeling)*. This rule, however, does not apply to parties who have a 'family relationship' in the sense of Article 237 paragraph 1 Dutch Code of Civil Procedure *(Wetboek van Burgerlijke Rechtsvordering)*. In that case, each of the parties will normally have to pay its own legal costs *(compensatie*) regardless of the outcome of the trial. Since stalking is often perpetrated by ex-partners, the court will relatively often order that each of the parties pay its own legal costs. The question is why the courts deviate from the rule to award the costs to the unsuccessful party when family matters are concerned and whether it is fair to apply this exception automatically to cases of ex-partner stalking. What is the rationale behind the exception of *compensatie* in 'family relationships'? To answer these questions, an overview of the legal costs that litigants have to pay will be described in Section 4.1. In Section 4.2, several cost allocation decisions in stalking cases will be analysed after which the reasons behind *compensatie* in 'family relationships' will be discussed and tested against cases of stalking (Sections 4.3 and 4.4).

10.2. Interlocutory proceedings

A civil restraining order can be obtained on the basis of Article 6:162 (wrongful act) in combination with Article 3:296 of the Dutch Civil Code *(Burgerlijk Wetboek*, hereafter: DCiC). Article 6:162 DCiC is a general clause and many different provisions are requested on the basis of this Article. If the defendant acted wrongfully against the plaintiff in the past or if there is a real threat that he or she will act wrongfully against the plaintiff at a time to come, a restraining

709 W. Schenk & J.H. Blaauw, *Het kort geding. B. Bijzonder deel*, Deventer: Kluwer 2000, p. 190.

710 M. Malsch, *De Wet Belaging. Totstandkoming en toepassing*, Nijmegen: Ars Aequi Libri 2004, p. 28.

711 T.K. Logan, L. Shannon & R. Walker, 'Protective orders in rural and urban areas. A multiple perspective study', *Violence against women* (11) 2005-7, pp. 876-911 on p. 887.

712 See J.M. Barendrecht & A. Klijn (eds.), *Balanceren en vernieuwen. Een kaart van sociaal-wetenschappelijke kennis voor de Fundamentele Herbezinning Procesrecht*, Den Haag: Raad voor de Rechtspraak 2004, p. 24.

order can be imposed to prevent the future occurrence of the behaviour.[713]

A restraining order can be obtained through the interlocutory proceedings which are governed by Articles 254 to 260 of the Dutch Code of Civil Procedure *(Wetboek van Burgerlijke Rechtsvordering*, hereafter: DCCiP). It is an independent and special procedure before the president of a civil court meant to obtain immediate judicial relief in urgent matters.[714] The simultaneous initiation of a standard procedure is not a requirement. The judge in interlocutory proceedings is competent in *civil* cases with an *urgent* character, but both concepts are explained quite leniently. It suffices that the plaintiff claims to have an urgent civil case. If waiting for the standard procedure is too problematic, the claim can be granted and the Supreme Court leaves the court a great deal of freedom to decide whether an interlocutory procedure is justified. Generally, the courts tend to easily accept the urgency of cases.[715] Furthermore, the plaintiff has to have a real interest in order to justify the claim (Art. 3:303 DCiC).

To initiate interlocutory proceedings, the initiator has to summon the defendant. Depending on the urgency of the matter, the hearing can be scheduled on every day and hour, including Sundays and holidays, but this is highly exceptional. Article 79 paragraph 2 DCCiP obliges the plaintiff to be represented by a lawyer, whereas the defendant is not required to have legal representation. Every claim that does not require the authority of a final decision *(kracht van gewijsde)* can be granted if the court thinks it proportional and efficient.[716] The plaintiff can ask for the most suitable relief. The relief can be conditional, suspended and restricted in time, so the court has an immense freedom.

Generally, a decision will follow immediately after the oral hearing, after the court has taken into consideration the interests of both parties and the gravity of the case. Every decision has to be motivated to sufficiently explain the line of reasoning that formed the basis of that decision, but the motivation of the judge does not have to meet the normal requirements of the standard procedure. The judge can order a person to give something, to do something, or to refrain from doing something (Art. 3:296 DCiC). The provision usually takes the form of an order or a prohibition strengthened by incremental penalty payments *(dwangsom)*, but committal for failure to comply with a judicial order *(lijfsdwang)* also belongs to the possible means of enforcing a judgment.[717] Within four weeks, both defendant and plaintiff can appeal to the Courts of Appeal and within eight weeks, they can appeal to the Supreme Court. Although decisions are legally binding, the execution still requires service (Art. 430 paragraph 3 DCCiP).

10.3 Advantages and disadvantages of civil restraining orders

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713 See A.S. Hartkamp & C.H. Sieburgh, *Asser-Hartkamp 4-III. Verbintenissenrecht. De verbintenis uit de wet*, Deventer: Kluwer 2006, no. 118ff.

714 W. Schenk & J.H. Blaauw, *Het kort geding. A. Algemeen deel*, Deventer: Kluwer 2002, p. 1.

715 Schenk & Blaauw (2002), p. 11.

716 The court can also refuse a provision when a case is not suitable to be dealt with in interlocutory proceedings (Art. 256 DCCiP). Cases are unsuitable when the facts are unclear, when the consequences cannot be predicted, or when the question of law is too complicated.

717 See H.J. Snijders, C.J.M. Klaassen & G.J. Meijer, *Nederlands burgerlijk procesrecht*, Deventer: Kluwer 2007, pp. 475-480.

Victims of stalking opt for civil restraining orders for various reasons. In contrast to the criminal justice solution offered by Article 285b DCC, they are not dependent on the help of the police, the procedure towards obtaining a restraining order is relatively simple, and civil procedures are generally seen as less stigmatising for the stalker than criminal ones. Often, victim and stalker have maintained an intimate relationship and sometimes they even have children together. For a victim who wishes to curtail the harassment by his or her ex-partner, going to the police may be too drastic a measure.

In addition, interlocutory proceedings are relatively fast. Every year, the Council for the Judiciary *(Raad voor de Rechtspraak)* gives an estimation of the average processing time of interlocutory proceedings in its annual report. According to this report, the average processing time of interlocutory proceedings in a civil court in 2006 was 47 days. In 2007, interlocutory proceedings took six weeks on average and in 2008 it was estimated that 91% of the cases were finished within three months.[718] The actual time spent in court depends largely on the length of the arguments presented by both parties. In 1985, in the District Court of Amsterdam, an average session took 30 minutes to one hour.[719]

Another advantage is that the evidentiary requirements are not as strict as in the proceedings on the merits *(bodemprocedure)* or criminal procedures.[720] The ordinary rules concerning evidence and evidential value do not apply to interlocutory proceedings[721]and the same goes for the rules concerning the obligation to furnish facts and the burden of proof *(stelplicht en bewijslast).*[722] Usually, the initiator of a civil procedure carries the burden of proof, unless a special provision or the principle of equity and fairness dictate otherwise (Art. 150 DCCiP). In interlocutory proceedings, the court is not bound by the legal rules concerning the burden of proof. Furthermore, the court is free to decide whether the facts have sufficiently been established.[723] The court is not restricted either to the evidence enumerated in the Civil Code and it is also allowed to let its judgment be influenced by, for example, the behaviour of both parties during the hearing. Sometimes these rules imply that the interlocutory procedure in first instance is nothing more than the oral handling of the case.

The scholars disagree as to what level of proof should be established. Some say the criterion for awarding a claim is whether there is a (reasonable) chance or probability that the defendant has performed the act,[724] others say that it suffices that the court has acquired a reasonable level of certainty on the facts,[725] but whatever it is, the level of proof seems more relaxed than the one used in civil proceedings on the merits or a criminal procedure.[726]

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718 See the annual reports of the Council for the Judiciary to be found at <www.rechtspraak.nl>. Unfortunately, the manner in which the processing time of cases was reported varied per year.

719 Hes & Van Ringen (1986), p. 73.

720 Malsch (2004), p. 28.

721 HR 19 december 1958, *NJ* 1959, 127.

722 HR 2 oktober 1998, *NJ* 1999, 682.

723 HR 21 april 1978, *NJ* 1979, 194.

724 Schenk & Blaauw (2002), p. 156.

725 W.D.H. Asser, *Bewijslastverdeling*, Deventer: Kluwer 2004, p. 52.

726 In many countries, the criterion for criminal conviction is whether the court is convinced of the guilt of the accused *beyond a reasonable doubt*. The likelihood of guilt is not considered enough for a conviction (Corstens 2005, pp. 632-633).

Next to the advantages, the interlocutory proceedings can have negative implications for the victim as well, but there is a lack of information on the specific problems and bottlenecks in the civil procedure.[727] Malsch mentions the fact that the execution of the restraining order still requires that it is served on the defendant *(betekening)*. If the defendant failed to obey the summons and the plaintiff fails to have the order served, the plaintiff is *de facto* powerless.[728]

Many victims, furthermore, dread a confrontation with their stalker. Of the 67 respondents in the Victim Support Questionnaire (see Chapter 5) who claimed that they had been awarded a civil restraining order, 25 (44.3%; 3 missing) said that they feared a confrontation with the stalker. Although the results are not entirely reliable – some respondents had mistaken the criminal restraining order for the civil one – it does give an indication of a prevalent problem. The confrontation with the stalker cannot be avoided. Unless the hearing takes place in the absence of the stalker, the victim will be confronted with his or her pursuer. This can be considered a major disadvantage of the civil procedure.

Another problem is that the role of the police in the enforcement of restraining orders is unclear.[729] In contrast to other countries, such as the United Kingdom or the United States, the violation of a restraining order is not a crime in the Netherlands. When the relief is meant to make a person refrain from doing something – as is the case with restraining orders – it is sensible that the initiator also requests an authorisation to call in the help of the police to enforce of the order (Art. 434 DCCiP). Strictly speaking this is superfluous, because the claimant already has the right to call the police, but when the bailiff asks for police assistance, they will consider this authorisation a legitimisation of their intervention.[730] Still, the police can only assist the bailiff in the execution of the civil order by means of escorting the stalker out of the neighbourhood, since the mere act of violating a civil restraining order is not liable to punishment.[731]

Furthermore, there is the questionable effectiveness of this means to deal with a stalker. Many scholars have been intrigued by addressing the question of effectiveness with respect to civil restraining orders. Cupach & Spitzberg were able to identify no less than 41 studies that, at least laterally, assessed the effectiveness of civil restraining orders.[732] Despite the reasonable number of effectiveness studies, it remains difficult to assess whether restraining orders are effective or not in the cessation or reduction of stalking behaviour. Not only are the studies characterised by disparate definitions of effectiveness and by different research designs, most of them also focus on restraining orders in a domestic violence context rather than stalking. On top of that, all the studies stem from abroad, since there has never been a large quantitative study into the compliance with restraining orders in the Netherlands.[733] It is possible that national studies may show different results, for example, due to the different legal systems (e.g., a system in which the violation of a restraining order is criminalised versus the

727 Barendrecht (2004), p. 7.

728 Malsch (2004), p. 28.

729 Malsch (2004), p. 29.

730 A.I.M. van Mierlo, C.J.J.C. van Nispen & M.V. Polak (eds.), *Burgerlijke rechtsvordering: de tekst van het Burgerlijke Wetboek van Rechtsvordering voorzien van commentaar*, Deventer: Kluwer 2005, p. 454.

731 Malsch (2004), p. 29.

732 Cupach & Spitzberg (2004), p. 153.

733 Malsch (2004), p. 31.

Dutch system in which it is not criminalised).

The study by Häkkänen et al. is one of the few that has focused exclusively on restraining orders in relation to stalking. According to the court and police files of a random sample of 240 Finnish stalking cases in which a restraining order had been issued, 35% of the stalkers violated the restraining order.[734] However, there was a significant decline of the proportion of restrainees employing violent stalking actions and threats. Although the issuing of a restraining order did not affect actions like making telephone calls, sending text messages and letters, making visits, and keeping surveillance, the proportion of those who physically assaulted the victim decreased from 80% to 17% following the issuance of the restraining order.[735] In order for restraining orders to work, it is essential that the victims do not initiate contact with the stalkers themselves. All the victims who had voluntarily met with their stalker reported violations of the restraining order.

In Tjaden & Thoennes' survey, 30% of the female and 20% of the male victims had applied for a restraining order against their stalker.[736] Of those who obtained the order, 69% of the women and 81% of the men reported a violation. Only 1% of the victims attributed the end of the stalking to a restraining order.

Of the 285 female domestic violence and stalking victims who had petitioned for a restraining order in Keilitz et al.'s study, 72% reported no continuing problems one month after the issuance of a temporary or permanent restraining order and in a follow-up interview after six months, 65% of 177 women claimed the same. The proportion of women being stalked, however, rose from 4% to 7% in between the two interviews. [737]

Furthermore, if effectiveness is understood to include victim satisfaction and perceived effectiveness, restraining orders do seem to be an important contributor to the victims' feeling of security and happiness. Keilitz concluded that 'in the majority of cases, victims felt that civil protection orders protected them against repeated incidents of physical and psychological abuse and were valuable in helping them regain a sense of well-being'.[738] Despite the presence of stalking and abusive incidents after the restraining order, many women reported an improvement in quality of life.

A final disadvantage of civil restraining orders will be explored in more depth. Of the 67 respondents in the Victim Support Questionnaire who claimed to have had a restraining order imposed against their stalker,[739] 23 (32.9%) considered the costs of the procedure a disadvantage. How expensive are those proceedings and how are the costs allocated by the courts?

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734 H. Häkkänen, C. Hagelstam & P. Santtila, 'Stalking actions, prior offender-victim relationships and issuing of restraining orders in a Finnish sample of stalkers', *Legal and Criminological Psychology* (8) 2003, pp. 189-206.

735 Even though Hoffmann & Öszöz had a much smaller sample (N=20), they found similar results. They concluded that a civil restraining order had actually stopped the stalking in only one fifth of the cases, yet in 45% an improvement could be measured (Hoffmann, J. & Öszöz, 'Die Effektivität juristischer Maßnahmen im Umgang mit Stalking', *Praxis der Rechtspsychologie. Themenhaft Stalking* (15) 2005-2, pp. 269-285).

736 P. Tjaden & N. Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey*, Washington D.C.: U.S. Department of Justice, Institute of Justice 1998.

737 S.L. Keilitz, C. Davis, H.S. Efkeman, C. Flango & P.L. Hannaford, *Civil protection orders: Victims' views on effectiveness*, Washington, DC: U.S. Department of Justice 1998.

738 Keilitz et al. (1998).

739 Again, this number may be flawed by misinterpretations on the part of the victims.

10.4 Costs of interlocutory proceedings[740]

10.4.1. The costs of interlocutory proceedings

The costs of a civil procedure are in principle more expensive for the victim than those of a criminal procedure, since these costs are not borne by the government. The initiator of a civil procedure is faced with different sorts of possible costs. Barendrecht sums up the following: the costs of looking up information, costs of legal aid and other help, costs of the judge/experts and other neutral intervening persons, costs of time spent on the case, costs of insecurity, emotional costs, and so on.[741] Although a (civil) procedure can bring along multiple sorts of costs,[742] only the financial costs for the plaintiff will be discussed here .

The first costs are already incurred before the actual trial even begins. The interlocutory proceedings are instituted by means of a summons. This summons has to be served by a bailiff, who is free to charge any rate he sees fit for his services.[743] As an indication, a charge of €72.25 exclusive of *BTW* (Dutch VAT) can be used, since that is the amount of money that is awarded for this service to the winning party if the court orders the unsuccessful party to pay the legal costs.[744] Furthermore, both parties are obliged to pay a percentage of the total costs of the civil procedure. In 2009, these court fees *(griffierechten)* amounted to €262 per party.[745]

In interlocutory proceedings, the plaintiff is obliged to be represented by a lawyer,[746] who, just like the bailiff, can charge whatever he wants.[747] The actual costs for legal counsel are difficult to estimate, since the prices vary significantly per lawyer and since the total costs are dependent on the chargeable hours, which, in turn, are dependent on the complexity of the case and the ease with which the evidence can be collected. Van der Torre made a tentative estimation in 2005 that a commercial lawyer would charge an average of €979 per (general) case,[748] which, admittedly, may be a poor indication of the specific costs of interlocutory proceedings in cases of stalking.

When the court has imposed a restraining order, this judgment is legally binding, but it

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740 This Section is based on S. van der Aa & P. Sluijter, 'Belaging en de proceskosten in familierechtelijke relaties: compensatie als misplaatste compassie?', *NJB* (84) 2009-38, pp. 2476-2482.

741 Barendrecht & Klijn (2004), p. 24.

742 Opportunity costs (such as loss of time and income) and intangible costs (emotional burden, stress, damaged relationships) can also be considered relevant costs, see M. Gramatikov, 'A framework for measuring the costs of paths to justice', *Tilburg University Legal Studies Working Paper No. 012/2008*, which can be consulted at <www.ssrn.com>.

743 Snijders, Klaassen & Meijer (2007), p. 127.

744 See the Regulations Adjusting the Court Bailliffs' Fees *(Regeling wijziging tarieven ambtshandelingen gerechtsdeurwaarders)* 2009.

745 See Article 2 paragraph 2, under 2g (plaintiff) and Article 4 (defendant) of the Civil Cases Fees Act *(Wet tarieven in burgerlijke zaken)*.

746 This does not apply to the defendant. See Article 255 paragraph 1 in conjunction with Article 79 paragraph 2 DCCiP.

747 An exception to this freedom is the prohibition of *no cure no pay* schemes. See also Rule 25 paragraphs 1-3 Rules of Conduct for Lawyers *(Gedragsregels voor Advocaten)* 1992.

748 A. van der Torre, *Advocaat met korting. Een analyse van de prijsgevoeligheid van de rechtsbijstand*, Den Haag: SCP 2005, p. 55.

still needs to be served on the defendant by the bailiff.[749] The rates for service are, again, not regulated, but €69.54 can be charged to the defendant if the court ordered him to pay the legal costs.[750]

If the defendant violates the restraining order, new costs arise in order to enforce a payment of the incremental penalty payment. When the plaintiff wishes to enforce the incremental penalty payment, because the defendant refuses to comply with the order, he has to contact his lawyer, who, at the expense of the plaintiff, contacts a bailiff. When the incremental penalty payment has been collected by the bailiff, these costs can (partly) be compensated by the profits of the penalty, for it is the plaintiff who is entitled to the money (Article 611c DCCiP).

Even more expensive is the committal for failure to comply with a judicial order. Not only does this measure place a heavy burden on the defendant, but for the plaintiff too, this is not always an attractive way of guaranteeing compliance, since the plaintiff has to pay the services of the bailiff and the expenses of lodging and maintenance of the defendant in prison.[751] These costs can be recovered from the defendant, provided that this person has sufficient financial means.[752]

All in all, the total costs will easily extend beyond €1000 and in case of committal for failure to comply with a judicial order, an even larger amount will be due. There are options for the plaintiff to transfer these expenses (partially) to other parties. For people with few financial resources, the possibility exists to apply for subsidised legal assistance. When a lawyer is assigned to them, all they have to pay is an income-related contribution towards the costs.[753] The court fees are also lower for this group of plaintiffs.[754] However, a negative decision on the awarding of the costs is not compensated, so the plaintiffs will have to pay those costs out of their own pockets, irrespective of their income. Those to whom the Legal Aid Act does not apply cannot profit from private (legal expenses) insurances either. If the insurance policy covers civil litigation on the basis of Article 6:162 DCiC, then cases between ex-partners are generally still excluded from their coverage.[755]

The costs that the plaintiff has to pay are furthermore dependent on the decision of the court as to the allocation of the costs. The basic rule in civil cases that are instituted by summons is that the court will award a fixed amount of money (which does not cover the actual expenses!)[756] to the party who wins the case. Only if both parties are partially proven right and the court decides in nobody's favour or when there is a family relationship between the parties, the court can rule that each of the parties will have to pay its own legal costs. Costs that were incurred unnecessarily can be left to the party who caused these costs.

In stalking a large part of the cases evolve around people who are in a 'family relationship'

749 Article 430 paragraph 3 DCCiP.

750 See the Regulations Adjusting the Court Bailliffs' Fees 2009.

751 Article 597 DCCiP.

752 Snijders et al. (2007), pp. 479-480.

753 For the tariffs, see Article 35 Legal Aid Act *(Wet op de Rechtsbijstand)*.

754 For the fees, see Articles 17-18a Civil Cases Fees Act *(Wet tarieven in burgerlijke zaken)*.

755 This conclusion was drawn on the basis of a personal inquiry at three large Dutch insurance companies (ARAG, DAS, and Interpolis).

756 This amount is in accordance with the court-approved scale of costs *(liquidatietarief)*. See <www.rechtspraak.nl>.

with each other within the meanin of Article 237 paragraph 1 DCCiP. Although this provision only mentions relatives, spouses, registered partners, and other life partners, the courts apply it to ex-partners as well. Only if civil proceedings have been initiated unnecessarily, if they are continued without necessity, or if parties display an insincere course of action during the proceedings, the courts will sometimes award the costs to one single party in cases with family ties.[757] These exceptions to the *compensatie* are of little relevance to victims of stalking, since a party who intrinsically opposes a required restraining order will never be reproved for unnecessary litigation. This means that victims of stalking by a relative or (ex-)partner have to be prepared to pay their own legal costs.

10.4.2. The allocation of costs in cases of stalking

In 'family relationship' cases, the costs are usually paid by both parties themselves, but the courts can deviate from Article 237 paragraph 1 DCCiP and award the total costs to one single party nevertheless. To show that the problems discussed above are not merely theoretical, but that the courts in certain cases of stalking indeed order a *compensatie* of the costs based on the nature of the (previous) relationship between parties, the website <www.rechtspraak.nll> was searched for relevant judgments. Since this database only contains cases that meet the selection criteria mentioned on the website, it is useless to study these judgments empirically and to generalise findings.

After a selection of relevant cases – namely, cases in which there clearly was a stalking issue, a 'family relationship', and a decision with regard to the legal costs – only sixteen judgments were left.[758] In three cases, the marriage had not yet been dissolved, but a divorce had been filed for, in three cases the parties were formerly married, in seven cases they had maintained a relationship without being married, and in three cases the parties were connected through family ties. With only three exceptions, all plaintiffs were granted the requested restraining order (see Table).[759]

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757 See, for example, HR 14 oktober 1994, *NJ* 1995, 64.

758 These sixteen cases are: Vzr. Rb Leeuwarden [President of the Leeuwarden District Court] 30 juli 2008, *LJN* BD9742; Vzr. Rb Almelo 3 december 2008, *LJN* BG6579; Hof 's-Hertogenbosch ['s-Hertogenbosch Court of Appeal] 15 juli 2008, *LJN* BD8302; Vzr. Rb Almelo 27 november 2007, *LJN* BC3320; Vzr. Rb 's-Gravenhage 9 februari 2007, *LJN* AZ8130; Vzr. Rb Maastricht 11 januari 2007, *LJN* AZ5958; Vzr. Rb Zutphen 2 februari 2006, *LJN* AV0781; Vzr. Rb Almelo 27 juli 2005, *LJN* AU0190; Vzr. Rb Arnhem 4 maart 2005, *LJN* AT2987; Hof 's-Hertogenbosch 9 juli 2002, *LJN* AE4992; Vzr. Rb Utrecht 9 november 2000, *LJN* AA8250; Vzr. Rb Leeuwarden 10 december 2008, *LJN* BG7766; Vzr. Rb Arnhem 26 juni 2008, *LJN* BD7637; Vzr. Rb Almelo 18 juni 2008, *LJN* BD4809; Hof Leeuwarden 25 juli 2007, *LJN* BB0638; Vzr. Rb Arnhem 14 september 2004, *LJN* AR3846.

759 In BB0638, the restraining order was granted by the court of first instance, but rejected on appeal.

	Married	Divorced with children	Divorced without children	Ex-partners with children	Ex-partners without children	Relatives
Compensatie (each party pays its own costs)	BD9742 BC3320 AT2987	AV0781	*BD7637*	AR3846 AZ5958 BG6579	BB0638	AA8250 AZ8130
Kostenveroordeling (one party is awarded all the costs)		AU0190			BD4809 BG7766 BD8302	AE4992

In the underlined cases, the judgment went against the plaintiff. In the italicised case, both parties – who demanded restraining orders against each other – succeeded in their action.

The picture that emerges is relatively diffuse. In the case of married couples, the costs were always subject to *compensatie* with referrance to the married status of the parties or the existent family relationship between them. For divorced couples, things were different. In one case the courts referred to the family relationship and consequently ordered *compensatie*, whereas in another that did not happen: in that case the unsuccessful female plaintiff was ordered to pay the expenses of the defendant. The fact that the two parties had a child together was of no influence. Ex-partners who were never joined in matrimony and who had children together were always ordered to pay their own costs in the current selection of cases. Without exception the underlying idea was that parties had once maintained a romantic relationship. In the case of (not formerly married) ex-lovers without children, the courts more often based the cost allocation on the outcome of the action and ordered the defendant to pay the costs, but sometimes the standard motivation for *compensatie* was applied.[760] In disputes between family members, one defendant was ordered to pay the costs of the plaintiff and in two other cases the parties had to bear their own costs.

From the above, it appears that in practice courts do revert to the (former) family relationship of parties to justify *compensatie*. Sometimes *compensatie* is even ordered in very poignant cases. For example, in case BD9742 the defendant – despite an active restraining order – physically abused the female claimant in her home. After this incident, for which the defendant was sent to preventive custody, he kept harassing his wife and she and her children were forced to leave their home and live elsewhere. Despite the fact that the court ruled in favour of the woman, that it even strengthened the restraining order with a committal for failure to comply with a judicial order – something which does not happen very often – and that the woman explicitly requested a *kostenveroordeling* of the man, each party was still ordered to pay its own costs with reference to the family ties.

How often this happens and whether there is a connexion between the application of

760 This was in cases BB0638 and BD7637.

the *compensatie* rule and the nature of the family relationship is unclear. There are too few (unselected) data to generalise the observed differences in cost allocation. This leads to the unfavourable and insecure situation for the plaintiffs that they, despite being legally in the right, perhaps still have to pay their own costs. Even an explicit request from the plaintiff to order the defendant to pay the legal costs often remained without effect.[761]

10.4.3. Rationale behind compensatie in family relationships

For a correct understanding of the reason behind compensatie in family relationships, it is necessary to know more about the reason behind the rule of kostenveroordeling in regular cases first, for this basic rule is far from self-evident. In the United States, for example, the basic rule is that, apart from some exceptions, each party pays its own costs: it is customary to opt for what we would call a compensatie, while Germany and England adhere to the principle of compensating the successful party.[762] In the 19th century, Dutch lawyers held fierce debates on the question of whether and to what extent there should be a kostenveroordeling and on what it should be based.[763] With reasonableness as a guiding principle, eventually a system was chosen in which the costs are allocated to the unsuccessful party with a limited compensation of the costs of legal aid. The risk of litigation, litigation policy, and access to justice for both parties were taken into consideration.[764]

Why does not the principle of reasonableness lead to a similar outcome in family relationships? Why is it that in those cases, compensatie is the standard procedure? This practice finds its origin in two arguments:[765]

1) Family members are considered not to initiate imprudent or malevolent proceedings.
2) Assigning all the legal costs to one party stands in the way of a possible reconciliation of the parties.

The first argument is based on a normative assumption. It is considered unacceptable to think that imprudent or malevolent proceedings can be held between family members. Disputes between family members are supposed to be serious and a *kostenveroordeling* is inappropriate. The validity of this assumption could be empirically tested, but such a pure factual refutation would deny the normative value of the argument, for it departs from the proposition that cases

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761 For example, AT2987, BD9742, AZ5958, and AV0781.

762 J.P.B. de Mot & G.G.A. de Geest, *Juridische infrastructuur: een internationale vergelijking vanuit economisch perspectief*, Den Haag: WODC 2004, pp. 49-50.

763 See the *Handelingen der Nederlandse Juristen-Vereeniging* 1875, Eerste Zitting, pp. 13-86 preceded by the preliminary advice of A.F.K. Hartogh.

764 Explanatory Memorandum *(MvT) Invoering Boeken 3, 5 en 6, Wijziging RV*, Deventer: Kluwer 1992, p. 36. These underlying assumptions are sometimes still under discussion. See, for example, the six preliminary advices for the meetings of the Netherlands Association for Procedural Law *(Nederlandse Vereniging voor Procesrecht)* in 1993 *(De kosten van een procedure)* and in 2007 *(De prijs van het gelijk)*.

765 W.L. Haardt, *De veroordeling in de kosten van het burgerlijk geding* (diss.), Den Haag: Martinus Nijhoff 1945, p. 51 and p. 58.

between family members *ought* not to be conducted imprudently.[766] It is a normative fiction, comparable to the fiction that everyone is supposed to know the law. This fiction seems to depart from the traditional idea of the family as a 'unity' within society, while this unity may be far gone when parties have split up and if one party seriously impedes the interests of the other.

The second argument is aimed at the expected consequences of a *kostenveroordeling*. It assumes that conflicts between family members are often temporary, so that the consequences of a trial should interfere as little as possible with the reconciliation.[767] Awarding the costs to one party is seen as the ultimate consequence of losing a case, so by taking this away, reconciliation between the parties is stimulated. This, however, is not obvious, for ordering that each party pays its own costs can lead to as much frustration on the part of the party who is legally in the right, but who is burdened with the costs of litigation.[768] A causal connection between *compensatie* and reconciliation has never been established (nor refuted). In addition, it remains to be seen whether reconciliation is something that should be strived for in the first place.

In a recent judgment of the Leeuwarden Court of Appeal, the above arguments were 'updated' in such a manner that two new arguments could be distinguished:[769]

3) For one party being objectively 'in the right' (…) does not automatically mean that the other (…) has initiated the proceedings or has put forward a defence against the demands of the first without proper grounds. These grounds can partially be based in the emotional import of the issue. In matters regarding family relationships, the court would fail to fulfill its duty, if it were only receptive to objective and legal argumentation.

The reconciliation argument can also be distinguished in the judgment albeit in a modernised form. It is now more geared to cooperation rather than reconciliation:

4) The necessary reserve of the court is also inspired by the consideration that the parties on many occasions still need to get along with each other, if only because they have children together. A *kostenveroordeling* at the expense of one to the benefit of the other can encumber the further relationship, because this order can be considered a 'profit of prestige'.

The third argument means that the other party – although formally in the wrong – may still have had genuine (emotional) grounds for taking a case to court. Someone can, for instance, feel victimised by the other's extra-marital affairs. In these cases, *compensatie* can be used as an instrument to express understanding for the emotional interests. These feelings, although understandable, are not legally relevant.

However, this argument does not apply to every family dispute, nor is it always completely absent in other, more business-like conflicts. Also in other disputes, like those between

766 *Ibid.* p. 51.

767 *Ibid.*

768 Hartogh (1875), p. 128 and Haardt (1945), p. 51 are also critical.

769 Own translation of Hof Leeuwarden 19 november 2008, *LJN* BG4803, consideration 11.

neighbours or those on contract law, the court has to decide on the basis of legal arguments, despite the possible presence of understandable (emotional) arguments of the other party. Furthermore, it is strange to have the winning party in family proceedings pay for a *possible* emotional 'triumph' over the other.

The fourth argument is very similar to the second one: a *kostenveroordeling* emphasises the loss of the one party, while the successful party may gain prestige from it. This, in turn, may stand in the way of future reconciliation or cooperation. Again this double causal connection has never been proven. Would visitation arrangements really be observed less once the court has ordered one of the parties to foot the bill for the other? Already back in 1875, Hartogh seriously questioned this line of thought:[770]

> The remedy is worse than the disease. The court can but is not obliged to order a *compensatie*, but when it does for once, the embitterment will be far greater than when the law forces the unsuccessful party to pay the costs. Besides, will not the loss of the case be the primary reason for bitterness?

Both Hartogh and the argument discussed depart from two conflicting intuitive notions that can only be clarified by subjecting the supposed causal connections to (empirical) psychological research.

Although the four arguments can be criticised as the foundation for *compensatie* in family cases as such, they do form the basis of the current administration of justice. In the following section, the arguments will therefore be tested against the practice in cases of stalking.

10.4.4. Putting the rationale behind compensatie to the stalking test

The first argument that was brought to the fore was that proceedings between family members are not reckoned to derive from malevolence or imprudence. In the case of stalking between ex-partners, however, there is not a single reason to preserve the normative fiction of the family as a 'unity'. This would even be unwarranted, since the problem with stalking is exactly that unity is lacking. What happens is that the stalker systematically invades the privacy and sometimes even the physical integrity of the victim in an effort to restore the unity with the victim or to deny that this unity has been destroyed. The request of the victim for a restraining order is not in keeping with the fiction of unity. On the other hand, it is also possible that certain oversensitive people think that they are being stalked, while in fact that is not the case. This phenomenon raises the risk of imprudent action. In those situations it is equally inappropriate to cling to the fiction of unity.

The second and fourth argument for the preservation of *compensatie* is the assumption that the allocation of the costs to the unsuccessful party would hinder reconciliation and cooperation. The main reason behind interlocutory proceedings in cases of stalking is precisely to avoid future contact with the stalker. The victim wants to be left alone. Under these circumstances it is unrealistic to frenetically try and keep the door open to reconciliation: this is all water under

770 Hartogh (1875), p. 128.

the bridge. Moreover, the victim should be given the opportunity to make that assessment him- or herself. Stalking victims could, for example, offer to pay their own legal costs if they value a future cooperation with the stalker and if they are afraid that a *kostenveroordeling* could ruin this. It could even be very hurtful if, despite the often threatening behaviour of the offender and despite the victim's explicit decision to separate from him or her, the court assumes that there is still an unbreakable link between victim and offender.

Perhaps cooperation is necessary, especially if victim and offender have children together. Still the question remains whether the choice between *compensatie* and *kostenveroordeling* should depend on that necessity. Furthermore, it must be mentioned here that the restraining orders often extend to the children as well and stalkers are often prohibited from contacting the children too because of their past misbehaviour.[771] Even if children are involved, there is not always a necessity to cooperate.

The third argument is based on the position that emotional interests should play a role in the proceedings too. Especially in stalking cases, the court often has to deal with emotional interests and emotionally charged arguments. Take, for example, the very prevalent situation in which one of the parties wishes to end the relationship, whereas the other still has romantic feelings for his or her (ex-)partner. It is only human not to accept this one-sided termination of a relationship without any resistance, but, for some time after the break-up, to try to win the other person back or to convince this person of the blatant mistake he or she has made. It is not always clear when these attempts at reconciliation convert into stalking.[772]

Should the courts recognise these emotions by leaving out a *kostenveroordeling*? In the cases on <www.rechtspraak.nl> in which the courts ruled in favour of the plaintiff the motivations given by the courts indicated quite the opposite: the courts seemed to seriously condemn the behaviour of the defendants and there was little understanding for their counterarguments. If there was any doubt as to the actual facts, the courts seemed to find for the defendant.[773] As a result, in cases where a restraining order was imposed, it may reasonably be assumed that one party was the victim and the other party the offender. Is it then justifiable that in these cases the victim pays for the emotional arguments of an offender who cannot accept the break-up and who is disrespectful of the victim's privacy?

10.5. Conclusion

It is safe to conclude that trying to obtain and enforce a restraining order can be an expensive undertaking, which can have a bearing on the access to justice of victims of stalking. But where the courts have an important means of mitigating this financial burden somewhat by having the unsuccessful party pay the legal costs, there is a tendency to order *compensatie* in family cases.

The four arguments that are used to abstain from a *kostenveroordeling* in family cases are

771 For example, BD9742.

772 C.J. Nierop, *Liefdesverdriet en stalking. De reikwijdte van het belagingsdelict in Nederland en Amerika*, Tilburg: Celsus juridische uitgeverij 2008, p. 32.

773 See, for example, BG6579.

based on (not empirically tested) connections and normative fictions. Never has a connection been established between a *kostenveroordeling* on the one hand and difficulties with future reconciliation and cooperation on the other. Furthermore, it remains to be seen whether reconciliation, future cooperation, and room for emotional interests are goals worth striving for or whether these derive from a nostalgic longing for a distant past when people were not supposed to separate and when family ties were bonds for life. The normative fiction of the family as a unit cannot be upheld, especially not when ex-partners are concerned.

Where the rationale of automatic *compensatie* in regular cases between relatives is already rather weak, this goes all the more when the issue at hand is systematic harassment or stalking. These cases in particular have a claimant who has clearly indicated that the stage of reconciliation is past and that his or her only goal is to be left alone. It is not appropriate to uphold the fiction of the family unit in which malevolence plays no part when stalking is concerned. The investigated cases, furthermore, did not contain a single clue to support the assumption that the courts wish to acknowledge the emotional interests of the defendant through the *compensatie*. It would be recommended to show great restraint anyway in ordering a *compensatie* on that ground, since that would force the victim to pay for the emotional interests of the offender.

'Automatic' *compensatie* in cases of stalking within a family relationship should be abandoned. There are no valid arguments for maintaining the *compensatie*, and considerations such as reasonableness, risk of litigation, and access to justice should lead to a *kostenveroordeling* in these cases as well. If one of the parties wants nothing to do with the other and in practice there are no external circumstances – such as mutual children – that necessitate future contact, it is not up to the courts to decide that this former link can still be relevant. The parties can make this assessment themselves. The plaintiff can ask for a *compensatie* when he or she wishes not to further disrupt the relationship with the other party. *Compensatie* should be the exception rather than the rule, and if courts wish to apply *compensatie* because of mutual children or other reasons, they should properly motivate this decision, with more than a mere referral to the family relationship.

Ordering the unsuccessful party to pay the legal costs is a clear, objective criterion that has been opted for in the Netherlands. For exceptions to this rule, good grounds should be put forward but these are often not present in cases of stalking. A standard *kostenveroordeling* is not always in the interest of victims. They too, run a bigger chance of having to bear the costs of the defendant when the case goes against them. Still it is easier to explain – and perhaps also easier to digest – such a course of action, than when a victim who is legally in the right is saddled with legal costs because the courts attribute greater value to reconciliation and offender emotions.

PART V
CONCLUSION

CHAPTER 11

CONCLUSION

The phenomenon of stalking is still a relatively unexplored area. This goes all the more for the phenomenon of stalking *in the Netherlands.* Although the initial buzz after the criminalisation of stalking in the Netherlands has waned a little, it is important to continue to pay attention to the problem of stalking. The idea behind this book was to shed some light on the reality of stalking in the Netherlands and several of the anti-stalking measures that are used in this country. This idea was specified by means of four research questions:

1. What is the prevalence and nature of stalking in the Netherlands?
2. How effective is the criminalisation of stalking in stopping or reducing the conduct and what are the advantages and disadvantages of a criminal justice solution in cases of stalking?
3. How effective is hiring a private protection/investigation agency or obtaining a civil restraining order in the fight against stalking and what are the advantages and disadvantages of resorting to these anti-stalking measures?
4. Is it possible to find a way to enhance the effectiveness and reduce the disadvantages of criminal law involvement that were identified, of obtaining a civil restraining order, or of hiring a private protection and investigation agency in cases of stalking?

The first three questions were of a descriptive nature, whereas the final question tried to go beyond description and to give a head start to possible improvements to the way in which stalking is currently dealt with in the Netherlands. As was done throughout the book, the fourth question will not be dealt with separately here, but will be incorporated in the other three questions.

1. What is the prevalence and nature of stalking in the Netherlands?

The prevalence of stalking in the Netherlands was measured with the help of two independent empirical studies. In the study that took place during the Tilburg Carnival of 2007, the respondents were allowed to self-define their victimisation. In the other – the Police Monitor of 2001 – the victimhood of respondents was assessed by means of a behavioural list. The results were remarkable. In the Carnival study, 16.5% of the respondents indicated that they had experienced stalking at least once in their lifetime. It had affected more than one in five women and almost one in seven men. The last year victimisation rate was 3.9%.

These – already considerable – numbers almost paled into insignificance compared to the results of the Police Monitor. With more than one in four women and almost one in five

men having experienced repeated unwanted behaviour, a lifetime prevalence rate of no less than 24% was found. Other findings were that making telephone calls was the most prevalent stalking tactic;[774] that 59.1% of the victims felt threatened as a consequence of the repetitive behaviour; that the offenders were predominantly of the male gender (88.1%); and that the identity of more than 56% of the harassers was unknown. A finding that was supported in both studies was the relation between age or gender and stalking victimisation: the older the respondent, the less likely the chance of stalking victimisation, and women had significantly greater odds of being victimised than men.

In this day and age of respect for a person's privacy, prevalence rates of this magnitude deserve serious academic, legal, and political attention. At the time of the Anti-stalking Bill, the initiators necessarily had to settle for estimations based on foreign research. The Carnival and the Policemonitor study, however, have shown prevalence rates that significantly exceed the rates that Verkaik & Pemberton had predicted. Given the estimation of almost half a million people who claim to have been the subject of unwanted repetitive attention, the discussion on whether the criminal justice system is capable of handling the (potential) extra workload is taken to a whole new level. Although the experiences that were reported in the Police Monitor or the Carnival study were not always necessarily relevant from a criminal law perspective, it does not come as a surprise that, in later chapters, both victims and practitioners complain about capacity issues. In order for the criminal justice system to be more efficient, the criminalisation of stalking should have been matched by a proportional increase in manpower in the entire criminal justice chain.

The Police Monitor also showed that, in contrast to international data, many Dutch victims were harassed by unidentified offenders. This may have important policy consequences, for example, when the Board of Procurators General needs to decide on whether or not to continue treating stalking predominantly as a form of domestic violence or whether stalking should be targeted in all its manifestations. Instead of including stalking in the Domestic Violence Instruction, stalking may, for instance, be deserving of a separate guideline. After all, victims of non-intimate stalking often felt threatened as well and their lives were also negatively influenced by the harassment.

However, before making decisions based on the results of the Police Monitor or the Carnival study, the results should be verified by a proper follow-up study. Given the limitations of both studies it is recommended that a section on stalking is again included in the next edition of the Police Monitor (now: Safety Monitor). This would allow for a better informed judgment of the increase or decline of the phenomenon over the past ten years. To enable a more reliable check of the relevance of the experiences with the criminal justice system, a more extensive behavioural list which simultaneously indicates the frequency and duration of the conduct should be included and, this time, the survey should incorporate a question that allows victims to self-define their victimisation as well. Furthermore, it would be interesting to have the module supplemented with questions on the experiences of stalking victims with the criminal justice system.

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774 At least in the Police Monitor. Perhaps there were other, more commonly experienced behaviours that were not on the list.

2. *How effective is the criminalisation of stalking in stopping or reducing the conduct and what are the advantages and disadvantages of a criminal justice solution in cases of stalking?*

It turns out that the legislator was justified in criminalising the conduct, for a quantitative survey of 356 stalking victims showed that contacting the police can be a very good strategy in the fight against stalking. 32.1% of the respondents, who had contacted the police, reported that the stalking had stopped completely thanks to this contact (and/or the subsequent criminal prosecution) and another 27.5% attributed a decline in the frequency of the stalking to criminal justice intervention. The police contact was furthermore helpful in changing the nature of the stalking: in 38.6% of the cases in which the stalking had not stopped completely, the nature of the stalking had become less bad or even much less so. Another positive effect could be witnessed in the subjective well-being of the respondent: 38.2% felt better or much better about themselves, 41% felt (much) safer, and 36.1% felt (much) more in control of the stalking thanks to the criminal justice system. It is fair to conclude that many victims were fairly to very satisfied with the police and the criminal justice system and that the interventions were perceived to be effective.

The survey also yielded less positive outcomes. Some respondents said that the frequency of the stalking had increased, that the stalker had switched to more disturbing behaviour, or that their overall well-being had declined as a result of the police contact. These are all important indicators of secondary victimisation: the suffering of the victims had increased due to their experiences with the criminal justice system. Part of the negative assessment could be explained by the disadvantages of the criminal justice system that were reported, such as the fact that victims were not positively treated or were not taken seriously, the inaction of the police, and lack of information.

A disturbing finding in this respect is that a successful progress of the case through the criminal justice system also seemed to be related to factors other than the seriousness of the offence. An example of one of these factors is the educational level of the victim. Where other significant relations between victim characteristics and subsequent criminal justice action disappeared after controlling for the seriousness of the stalking, the relationship between educational level and a criminal trial persisted. It seems that the lower the victim's education, the less likely it is that he or she manages to have the case brought before a court of law. The mechanism behind this finding and other ones needs to be investigated thoroughly. It must be found out, for example, whether victims with a lower education are in need of additional information on the preservation of evidence, whether they need extra coaching to guide them through the procedure, or whether they are perhaps discriminated against.

Forty-five Belgian and Dutch victims who were interviewed on some of the findings of the survey supplemented the criminal justice issues that had been identified in the quantitative survey by several other problems. Some victims indicated that the police did not always correctly document the stalking incidents in the police file, that they had been sent away from the police station without even having a registration taken down, that they had been confronted with victim-blaming, or that they had been accused of violating Article 285b DCC themselves. In addition, their experiences had not always been acknowledged as a genuine crime, and when they indicated that they merely wanted help in the cessation of the stalking without wanting

to follow the entire legal procedure through, they found little response with the police. The criminal justice system turned out to have a preoccupation with recovering the substantive truth and enabling an eventual prosecution. Pragmatic (non-prosecutorial) solutions to stalking were just not contemplated. Another problem was the fact that the victims had to relate the story over and over again each time a new police officer was involved. Many interviewees explicitly expressed the need to have one contact person within the police. The criminal justice system was sometimes found to be unresponsive to these needs.

After having established some of the problems that stalking victims encounter when they come into contact with the criminal justice system, the time had come to give seven public prosecutors and police officers the opportunity to react to the 'allegations'. Not only were they the third source for the identification of even more issues, but they were also asked to explain what, in their opinion, had caused the problems.

The practitioners generally endorsed the previous findings and admitted that in practice things went wrong, but they added that the victims themselves were not entirely blameless either. The problem on the level of the victims that really stuck out was the fact that some victims continued to initiate contact with the stalker or react (too often) to the stalker's approaches. In the experience of the public prosecutors, some cases had failed as a result of the inconsistency of the victim, who had contacted the stalker contrary to the advice not to do so. Furthermore, the practitioners complained about inaccurate evidence collection. Some victims did not meticulously keep track of all the incidents in a log and they thoughtlessly threw away important pieces of evidence.

As for the police, the respondents could imagine that there were still officers who did not fully appreciate the seriousness of the problem, a fact that is reflected by their attitude towards the victims. Sometimes the respondents attributed this negative attitude to the behaviour of the victims themselves, at other times they blamed the natural inclination of certain police officers to feel more indifferent about issues of personal violence.

In addition, a lack of capacity is felt throughout the criminal justice system. Both the police and the Public Prosecution Service were assessed on the basis of finalised cases, so stalking cases had to compete with other (possibly more straightforward) cases. This competition for limited capacity was often decided in favour of other cases. Another result of the lack of capacity is that it generally took a long time to have (stalking) cases processed. One solution for this, which was brought forward by the prosecutors interviewed, was to always bring a suspect before an examining magistrate if there were grounds and serious grievances, if only to procure a suspension of the pre-trial detention under certain conditions. In this way, the victims were helped by using the criminal law as an instrument to enable early intervention.

Finally, the problem that was brought forward in the assessment of the criminal provision itself was that Article 285b DCC was generally seen as requiring much evidence. Many respondents rated this as the biggest problem. Others pointed out that the principle of *ne bis in idem* or double jeopardy was a cause of concern too.

After the Victim Support Survey, the interviews with victims, and the interviews with public prosecutors and police officers had helped to identify some of the main issues, an important question was whether the problems of stalking victims arose out of legal restrictions or implementation difficulties. Chapter 4 and Chapter 8 served to explore some of the possible

legal restrictions. The legal aspects of problems such as the evidence requirements and the principle of *ne bis in idem* were assessed and the conclusion was that (stalking) legislation and case law seemed less strict than the practitioners and victims perceived them to be.

A review of the published stalking cases showed that the Supreme Court and the lower courts have adopted a relaxed approach to claims of stalking. Four incidents in four days can already suffice to convict an offender for stalking. In general stalking was readily assumed, which also appeared from the fact that, in 93% of the cases, the stalking charge was declared proven. Furthermore, the minimum standards of evidence were interpreted so leniently that they were not really in the way of a stalking charge either. As for *ne bis in idem*, in Chapter 8 it was shown that Article 68 DCC can be interpreted in a way that removes the statutory difficulties of using the same incidents twice: once for prosecuting a single criminal offence, once for establishing the systematic fashion in which the stalking took place.

With the legal restrictions out of the way, only implementation difficulties remained and, sadly, plenty of those could be detected. For example, none of the regions where the interviewed practitioners worked had implemented local stalking protocols, and a national protocol was lacking as well. In addition, only stalking in the domestic violence context was (sporadically) prioritised, the victims were not always stimulated to file a report, caller ID or calling history was not automatically requested everywhere, the police made mistakes when it came to the correct registration of stalking cases, there was no special training on stalking available for practitioners, victims were sometimes poorly informed on the progress of their case, it was uncommon to make one officer the contact person of a stalking case, and contacting the stalker with an eye on prevention was only considered by half the police officers interviewed. There also appeared to be misunderstandings as to what stalking exactly entails, what the police are allowed to do in cases of stalking, or what can serve as evidence. These misunderstandings stand in the way of an efficient use of criminal law and its potential in countering stalking. Add to that the indifferent attitude of some practitioners and their consequent inactiveness and it is not hard to imagine why certain cases go wrong. Much therefore depends on the existent knowledge and willingness of the police and the judiciary. The mere criminalisation of behaviour is insufficient: there needs to be widespread support of the new regulations and sufficient expertise within the enforcement agencies as well.

From the Explanatory Memorandum, it appears that, at the time of the criminalisation, the legislator had a rigorous enforcement of Article 285b DCC in mind. Criminal prosecution was seen as an acknowledgement that the government was taking the problems of the victims seriously and it was the police and the Public Prosecution Service which would have to take action, not in the first place the victim.[775] A specific provision would stimulate the police to carry out a more focused investigation, to provide victims with protection and it would be a significant advantage for victims to no longer have to deal with this dreadful business alone, but to find themselves supported by the government.[776] The same attitude can be found in the Domestic Violence Instruction, which promotes rigorous action in the case of stalking by family, family friends, or ex-partners. As it is, practice often does not correspond to the legislator's intentions.

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775 *Kamerstukken II* 1997/98, 25 768, no. 5, p. 10.

776 *Ibid.*, p. 13.

Although a large part of the victims in the Victim Support questionnaire seemed fairly satisfied, there is still ample room for improvement. A first recommendation to increase criminal justice effectiveness and victim satisfaction is to institutionalise the use of one police file that is meticulously administrated and to assign one specialised contact person per case. Apart from that, a national protocol on how to deal with stalking should be developed and placed on the Police Knowledge Net, and police officers would be better able to deal with stalking if they receive a more in-depth training on the topic. This training should not be imbedded in a domestic violence context but should deal with stalking in its own right. During the training, a greater consideration for the needs of stalking victims should be internalised and attention should be paid to the sometimes diverging needs of victims. An even better – but probably more expensive – option is to set up specialised anti-stalking units.[777] The habit of public prosecutors to try and achieve (suspension of the) preventive custody whenever possible should be stimulated and the topic should be placed on the agendas of the *Veiligheidshuizen*. In the end, with a greater consideration for their procedural and distributive needs, this special group of victims is bound to be much more satisfied about themselves, with the criminal justice system, and with society as a whole and surely that is something worth striving for.

3. *How effective is hiring a private protection or investigation agency or obtaining a civil restraining order in the fight against stalking and what are the advantages and disadvantages of resorting to these anti-stalking measures?*

The criminal justice approach to stalking turned out to be problematic in practice. Many report foundered on the (perceived) strictness of evidentiary requirements, a lack of capacity within the police and the Public Prosecution Service, the low priority, and sometimes even scepticism with regard to the seriousness of the crime. When a report did result in actual criminal prosecution, this was often preceded by a long period of evidence collection and file preparation. All this was reason enough for some victims to resort to other measures against this type of unwanted behaviour.

One of those alternative options is to solicit the help of the Dutch Crime Fighting Foundation, which specialises in cases of stalking. Thanks to their AORTA protocol, with which they can provide a tailor-made approach, the victim is in theory not only released from the harassment, but he or she is also supported, because some of the negative consequences of the stalking are taken away, for example, libellous messages are removed from the internet. The foundation's intention is to prevent a continuation of the stalking and to improve the quality of life for the victim. Trying to procure an arrest or to have the stalker brought before a court of law is only one of the options that the foundation has at its disposal, but it is not a goal in itself.

An explorative file research of 26 cases that the foundation had dealt with since its establishment revealed that in twelve cases the perpetrators had stopped entirely after the intervention and that in three cases the stalking had become less frequent. The remaining cases were either closed by the victims themselves, they were still ongoing, the stalking had stopped

777 Also A.R. Roberts & S.F. Dziegielewski, 'Changing stalking patterns and prosecutorial decisions: Bridging the present to the future', *Victims and Offenders* (1) 2006-1, pp. 47-60.

spontaneously, there appeared to be no stalker at all, or it was unknown whether the stalking had ended. A remarkable finding was that in eight of the twelve cases in which the stalking had ceased completely, this effect was already brought about by the simple notification to the stalker that the foundation had taken on the case.

Despite the promising results of the case study, there were also negative aspects to the foundation's approach. Disadvantages that related specifically to the foundation were that virtually no attention was paid to the protection of the victim and that sometimes considerable costs were attached to the intervention. Another disadvantage that not only concerns this particular foundation, but that affects the private protection and investigation industry in its entirety is that private protection, but especially private *investigation*, is not considered legitimate. Critics have objected that private investigators are involved in *criminal* investigation, that they use investigation methods that the police are only allowed to use under strict conditions, and that the few rules they have to adhere to are structurally disregarded.

As to the first two objections, in Chapter 9 it was shown that private investigators are *not* involved in criminal investigation, at least not formally, and that the rules set out in the Privacy Code of Conduct contain strict prohibitions for the investigative methods that are used most often. If the Code is followed to the letter, the claim that private investigators have greater freedom than the police is no longer tenable. However, it is the actual adherence to the Code that poses the most problems. Although there are no reliable estimations on the prevalence of violations of the Code in practice, there are signs that the industry does not always pursue a legitimate course of action. As a consequence, an enhancement of the controls and the enforcement by the police of the Privacy Code of Conduct is emphatically called for. If the industry was monitored more diligently, then private investigation and private protection could potentially be a very valuable addition to the existent anti-stalking armamentarium.

Another approach that was explored was the imposition of a civil restraining order through interlocutory proceedings. Civil restraining orders and/or interlocutory proceedings are welcomed for their relatively lenient evidentiary standards, for the fact that the victim is independent of the police, and for the generally short processing time of cases. The other side of the coin is that civil restraining orders require serving the order on the defendant, which is often troublesome, that their effectiveness is questionable, and that financial costs are involved for the victim. This latter disadvantage was focused on and possible solutions were explored.

The fact is that civil courts have an important tool at their disposal to distribute the costs of civil litigation in the form of cost allocation. The general rule is that the losing party is ordered to pay the costs of the party in whose favour the case is decided. However, in cases that involve litigants with a 'family relationship' (which is often the case in stalking disputes), it appeared that the courts have a tendency to order each party to pay its own costs, irrespective of the outcome of the case. The rationale behind this so-called *compensatie* was investigated and it turned out that it was based on some ill-founded, normative assumptions: family members are presumed not to initiate imprudent or malevolent proceedings, assigning the costs to one party would stand in the way of a possible reconciliation or cooperation, and a *kostenveroordeling* would dismiss the emotional arguments that the losing party may have rightfully put forward.

In the book, a firm stance *against* these arguments was taken, first of all because they lack any empirical basis. A *compensatie* may have quite the opposite effect, with the successful

party being disinclined to reconcile or cooperate precisely because of the undeserved costs. In addition, parties with a family relationship may be just as likely to engage in imprudent proceedings as anybody else and other disputes may be just as emotional as family matters.

The arguments become even less convincing when placed against the stalking yardstick for, precisely in these cases, the victim has clearly indicated that he or she no longer appreciates any contact with the stalker. Pretending that reconciliation and cooperation are still within reach is useless. The same goes for the fiction of 'family unity' that inspired the assumption that families do not initiate malevolent proceedings. When one person systematically invades another person's privacy, unity is clearly lacking. It could even be considered hurtful when a third party (the court) decides to attach value to this suggested link and thereby implicitly rules that parties are bound for life. Finally, the acknowledgment of emotional arguments through the *compensatie* is not convincing either. In the cases under investigation, none of the courts showed signs of a desire to acknowledge the emotional interests of the defendant, but even if they had, the question remains whether these interests deserve recognition at the expense of the victim. The arguments in favour of *compensatie* already have a weak enough basis as it is, but they become even more objectionable when stalking is concerned. The advice here is to depart from the automatic *compensatie* in stalking or other cases with a family relationship and to revert to the standard of *kostenveroordeling*.

Finally, although the omnipresent call for more research in academic publications can sometimes come across as a cliché, this thesis will nevertheless conclude with such a recommendation. The fact is that there are still many blanks in our knowledge of the phenomenon and only untiring investigation can bring to light the bottlenecks in the way stalking is dealt with, can uncover best practices and, in doing so, will eventually and hopefully advance the position of victims without losing sight of the rights of the offender. So that instead of *surviving*, victims of stalking may be able to start *living* again. In this thesis, only some of the issues were explored, but much more can and should be done.

DUTCH SUMMARY

Het fenomeen belaging is tot op heden nog relatief weinig onderzocht. Dit geldt des te meer voor belaging *in Nederland*. Het doel van dit boek was om onderzoek te doen naar belaging in Nederland en naar enkele anti-belagingsmaatregelen die hier te lande worden toegepast. Dit doel werd nader geconcretiseerd met behulp van vier onderzoeksvragen:

1) Wat is de aard en omvang van belaging in Nederland?
2) Hoe effectief is de strafbaarstelling van belaging in het stoppen of verminderen van dit gedrag en wat zijn de voor- en nadelen van strafrechtelijke maatregelen in dit soort zaken?
3) Hoe effectief is het inschakelen van een particulier recherche- en beveiligingsbedrijf of het bemachtigen van een civiel straatverbod in het tegengaan van belaging en wat zijn de voor- en nadelen van deze maatregelen?
4) Is het mogelijk om de effectiviteit van het strafrecht, een particulier recherche- en beveiligingsbedrijf en een civiel straatverbod te verhogen en om (enkele van) de nadelen te weg te nemen?

1. Wat is de aard en omvang van belaging in Nederland?

De omvang van belaging in Nederland werd gemeten met behulp van twee verschillende empirische studies (hoofdstukken 2 en 3). In het eerste onderzoek, dat plaatsvond op de Tilburgse kermis, mochten de respondenten zelf aangeven of zij al dan niet slachtoffer waren geworden. In het andere onderzoek – de Politiemonitor van 2001 – werd slachtofferschap gemeten met behulp van een gedragslijst. De resultaten waren opmerkelijk. In de kermisstudie gaf 16,5% van de respondenten aan dat zij ooit in hun leven waren belaagd. Meer dan één op de vijf vrouwen en bijna één op de zeven mannen zei hier last van te hebben gehad. Verder werd 3,9% van de respondenten belaagd gedurende de twaalf maanden voorafgaand aan het onderzoek.

Deze toch al behoorlijke uitkomsten werden nog eens overtroffen door die van de Politiemonitor. De data analyse bracht aan het licht dat 24% van de bevolking ooit het slachtoffer was geweest van 'herhaaldelijk ongewenst gedrag' (meer dan één op de vier vrouwen en bijna één op de vijf mannen). Andere bevindingen waren dat telefoneren de meest populaire vorm van belagen was, dat veel slachtoffers zich door het herhaaldelijke gedrag bedreigd voelden, dat de daders voornamelijk van het mannelijke geslacht waren en dat in veel gevallen de identiteit van de belager onbekend was. Verder werd in beide studies een verband gevonden tussen de leeftijd en het geslacht van het slachtoffer en belaging: hoe ouder de respondent, des te kleiner de kans op belaging en vrouwen hadden een significant grotere kans om slachtoffer te worden dan mannen.

2. Hoe effectief is de strafbaarstelling van belaging in het stoppen of verminderen van het gedrag en wat zijn de voor- en nadelen van strafrechtelijke maatregelen in dit soort zaken?

Een enquête onder 356 slachtoffers toonde aan dat contact opnemen met de politie een goede strategie kan zijn in de strijd tegen belaging (hoofdstuk 5). Maar liefst 32,1% van de respondenten die contact hadden opgenomen met de politie beweerde dat het belagen volledig was gestopt dankzij dit contact en/of de eventueel daaropvolgende strafrechtelijke reactie. In 27,5% van de gevallen had het contact de frequentie van de belagingshandelingen doen afnemen en in 38,6% van de gevallen was de aard van het gedrag minder ernstig geworden. Het contact met de politie (en justitie) had ook een positieve invloed op het welzijn van de respondenten: 38,2% voelde zich (veel) beter over zichzelf, 41% voelde zich (veel) veiliger en 36,1% had het gevoel (veel) meer controle over het belagen te hebben. Van de respondenten was 46,5% dan ook (zeer) tevreden over het contact met de politie en de eventueel daaropvolgende strafrechtelijke reactie. Al met al waren veel slachtoffers (redelijk) tevreden over het optreden van de strafketen en werden de interventies veelal als effectief ervaren.

De enquête leverde echter ook minder positieve resultaten op. 3,7% van de respondenten zei dat de frequentie van het gedrag was gestegen en 12,0% zei dat de belager was overgestapt op ernstiger gedrag als gevolg van het contact met de politie. Bovendien voelde 18,8% zich slechter over zichzelf, voelde 7,5% zich minder veilig en had 12,4% het gevoel minder controle te hebben over het belagen. Dit zijn belangrijke indicatoren voor *secondary victimisation* of secundair slachtofferschap: het lijden van deze slachtoffers was toegenomen als gevolg van hun ervaringen met het strafrechtsysteem.

De negatieve resultaten konden (deels) worden verklaard door de nadelen van het strafrechtsysteem die aan het licht kwamen. Veel slachtoffers gaven aan dat de bewijsverzameling moeizaam verliep (38,4%), ze waren bang dat de stalker wraak zou nemen (32,4%), ze hadden het gevoel dat de politie hen niet serieus nam (30,3%), ze vonden het lang duren voordat de politie in actie kwam (27,7%) of ze zeiden dat de politie in zijn geheel geen actie ondernam (19,4%). Verder werd 18,8% niet goed op de hoogte gehouden van ontwikkelingen in zijn of haar zaak, vond 17,6% het vervelend om afhankelijk te zijn van de politie, werd 11,8% niet goed behandeld en was 4,6% bang dat de dader in een kwaad daglicht zou worden gesteld. In totaal was 39,2% van de slachtoffers (zeer) ontevreden over de strafketen.

Om ervoor te zorgen dat *alle* mogelijke problemen boven water zouden komen werd de enquête aangevuld met slachtofferinterviews (hoofdstuk 6). Vijfenveertig Belgische en Nederlandse slachtoffers werd gevraagd om wat meer te vertellen over hun ervaringen met het strafrechtsysteem. Uit deze interviews bleek dat politieagenten belagingsincidenten niet altijd nauwkeurig registreerden, dat slachtoffers soms weg werden gestuurd zonder dat er zelfs maar een mutatie werd opgenomen, dat belaging niet altijd serieus werd genomen, dat slachtoffers geconfronteerd werden met *victim blaming* of dat slachtoffers zelf werden beschuldigd van belaging. Ook slachtoffers die slechts hulp zochten bij het stoppen van het gedrag, maar die niet per definitie geïnteresseerd waren in het volledig doorlopen van de juridische strafprocedure, vonden weinig gehoor. Het strafrechtsysteem was sterk gericht op het blootleggen van de materiële waarheid en een daaropvolgende strafvervolging. Pragmatische oplossingen die niet bijdroegen aan de strafvervolging werden niet overwogen. Een ander nadeel was dat de slachtoffers hun verhaal telkens opnieuw moesten doen, omdat er constant andere agenten op hun zaak zaten. Veel geïnterviewden gaven aan dat ze behoefte hadden aan één contactpersoon. Het strafrechtsysteem kwam niet altijd aan deze en andere behoeften tegemoet.

Nadat de problemen in kaart waren gebracht, kregen zeven officieren van justitie en politie-beambten de kans om te reageren op de 'beschuldigingen' (hoofdstuk 7). Over het algemeen onderschreven zij de eerdere bevindingen, maar zij voegden eraan toe dat de schuld soms ook bij het slachtoffer zelf lag. Slachtoffers namen op eigen initiatief contact op met de belager of zij reageerden (te vaak) op zijn of haar toenaderingen, ondanks het advies dat niet te doen. Dit soort gedrag kan een strafzaak ernstig benadelen. Bovendien waren veel slachtoffers ook niet bepaald nauwkeurig waar het aankwam op bewijsverzameling: niet alle incidenten werden vastgelegd in een logboek en bewijsmateriaal werd soms achteloos weggegooid. Daarnaast kwam ook nog eens het gebrek aan capaciteit die in de gehele strafketen voelbaar was. Zowel de politie als het OM worden beoordeeld op afgeronde zaken, met als gevolg dat belaging moet concurreren met andere (eenvoudiger) zaken. Deze strijd om de beperkte capaciteit werd soms beslist in het voordeel van andere zaken. Een ander gevolg van het gebrek aan capaciteit was dat er over het algemeen sprake was van lange doorlooptijden. Tenslotte waren de geïnterviewde praktijkbeoefenaars ook van mening dat artikel 285b Sr. veel bewijs vereiste. Velen zagen dit zelfs als het grootste probleem. Anderen hekelden juist de onverenigbaarheid van een tussentijdse afdoening van belagingsincidenten met het *ne bis in idem*-beginsel.

In de hoofdstukken 4 en 8 werden enkele van de gevonden problemen getest op hun juridische houdbaarheid. Kwamen de problemen voort uit juridische beperkingen of was er eerder sprake van een gebrekkige implementatie? In hoofdstuk 4 werden de bestanddelen van artikel 285b Sr. geanalyseerd met behulp van de parlementaire geschiedenis en de gepubliceerde jurisprudentie. Hieruit bleek dat de Hoge Raad en de lagere gerechten relatief eenvoudig belaging aannamen. Vier incidenten in vier dagen volstonden bijvoorbeeld al om aan de vereiste stelselmatigheid te voldoen. Verder werden de minimum-bewijsregels zo ruim geïnterpreteerd, dat ook deze niet echt een belemmering vormden voor een bewezenverklaring.

Met betrekking tot *ne bis in idem* toonde hoofdstuk 8 aan dat artikel 68 Sr. kan worden geïnterpreteerd op een manier die de wettelijke beperking om éénzelfde feit twee keer te gebruiken omzeilt. Omdat de ratio van belaging zoveel verschilt van die van andere delicten is het gerechtvaardigd om een incident tweemaal te gebruiken: één keer voor het vervolgen van het losstaande incident en één keer voor het vaststellen van de stelselmatigheid van de belaging.

Nu de juridische bezwaren enigszins waren gerelativeerd, bleven de implementatieproblemen over. Helaas waren er van die laatste categorie voldoende voorbeelden te vinden. De zeven officieren van justitie en politie-beambten gaven bijvoorbeeld aan dat er geen belagingsprotocol bestond, dat er in het geval van telefonische belaging niet altijd bellijsten werden opgevraagd, dat er geen gespecialiseerde training beschikbaar was en dat de mogelijkheid om de belager vanuit preventieve overwegingen te contacteren vaak niet eens werd overwogen. Ook bestonden er misverstanden over wat belaging precies inhoudt, wat de politie mag doen in gevallen van belaging en wat als bewijs kan dienen. Deze misverstanden staan een efficiënt gebruik van het strafrecht in de weg. Tel daar de onverschilligheid van bepaalde politie- en justitiebeambten bij op en het is niet moeilijk om in te zien waarom sommige zaken mislopen.

Uit de Memorie van Toelichting bij het wetsvoorstel van artikel 285b Sr. blijkt dat de initiatiefnemers een serieuze aanpak van belaging voor ogen hadden. Strafvervolging werd gezien als een erkenning van overheidswege van de ernst van het probleem en voornamelijk de politie en het OM zouden actie moeten ondernemen, niet in de eerste plaats het slachtoffer.

Dankzij de strafbaarstelling zou de politie een beter gericht opsporingsonderzoek kunnen verrichten en zouden de slachtoffers beter beschermd worden doordat ze niet langer alleen staan in de strijd tegen belaging. De situatie zoals ze nu is, lijkt niet altijd in overeenstemming met de intenties van de wetgever.

3. *Hoe effectief is het inschakelen van een particulier recherche- en beveiligingsbedrijf of het bemachtigen van een civiel straatverbod in het tegengaan van belaging en wat zijn de voor- en nadelen van deze maatregelen?*

Een alternatieve oplossing voor het tegengaan van belaging is het inhuren van een particulier recherche- en/of beveiligingsbedrijf. Niet alleen kan een dergelijk bedrijf helpen bij het verzamelen van bewijs, maar ook kan het behulpzaam zijn in het wegnemen van enkele van de negatieve gevolgen van de belaging, bijvoorbeeld door lasterlijke berichten te verwijderen van internet. De Stichting Criminaliteitsbestrijding Nederland, die gespecialiseerd is in het tegengaan van belaging door middel van particuliere opsporing en beveiliging, heeft een speciaal protocol hiervoor ontwikkeld: het AORTA protocol.

Met behulp van een exploratief dossieronderzoek (hoofdstuk 9) werd bekeken hoe effectief het inschakelen van particuliere opsporing en beveiliging kan zijn in de strijd tegen belaging. Van de 26 zaken die de Stichting had behandeld sinds haar oprichting was in twaalf zaken het belagen volledig gestopt en was in drie zaken het belagen minder frequent geworden na de interventie. Opmerkelijk was dat in acht van de twaalf zaken waarin het belagen volledig stopte, dit werd veroorzaakt door de (wettelijk verplichte) brief aan de dader waarin het opsporingsonderzoek werd aangekondigd.

Hoewel particuliere opsporing en beveiliging dus een positief effect kunnen hebben op belaging, kleven er ook belangrijke nadelen aan. De nadelen die specifiek betrekking hadden op de Stichting Criminaliteitsbestrijding Nederland waren het feit dat er vrijwel geen aandacht werd besteed aan de bescherming van het slachtoffer en dat er (soms hoge) kosten mee gemoeid waren. Voor de particuliere opsporingsbranche in het algemeen geldt dat ze wordt gezien als illegitiem: in de eerste plaats omdat ze zich zou bezig houden met opsporing in formele zin, ten tweede omdat ze zich niet hoeft te houden aan de beperkingen die voor politie en justitie wel gelden en ten derde omdat de weinige regels die er zijn met de voeten worden getreden. In hoofdstuk 9 werd aangetoond dat particuliere opsporing niet kan worden gekwalificeerd als opsporing in formele zin en dat de *Privacy gedragscode sector particuliere onderzoeksbureaus* – indien nageleefd – het gedrag van privé rechercheurs behoorlijk aan banden legt, althans voor wat betreft de meest gebruikte opsporingsmethoden. Maar het is de naleving van de Privacy gedragscode die voor problemen zorgt. Er zijn aanwijzingen dat de particuliere opsporingsbranche zich hier niet aan houdt.

Een andere oplossing voor belaging is het vorderen van een straat- en/of contactverbod via een civiel kort geding. Een kort geding procedure heeft als voordeel dat het slachtoffer niet afhankelijk is van de politie, dat de bewijsstandaard lager is dan in een strafprocedure en dat de procedure een korte doorlooptijd kent. Aan de andere kant moet het vonnis worden betekend, is de effectiviteit twijfelachtig en zijn er voor het slachtoffer financiële kosten verbonden aan de procedure. Dit laatste nadeel werd nader onderzocht.

Normaal gesproken krijgt de winnaar van een civiele zaak de proceskosten (deels) vergoed door de veliezer, maar niet wanneer partijen in een familierechtelijke relatie tot elkaar staan. Dan worden de kosten haast altijd gecompenseerd: iedere partij betaalt zijn eigen kosten ongeacht de uitkomst van het geding. Omdat de belagingszaken die voor de rechter worden gebracht hoofdzakelijk worden gepleegd door ex-partners is er in dit soort zaken relatief vaak sprake van compensatie van de kosten. In hoofdstuk 10 werd de ratio achter dit mechanisme bekeken en werd geconcludeerd dat deze voornamelijk steunt op onbewezen aannames en een ouderwetse visie op familiebanden die in geval van belaging volledig misplaatst is.

4. *Is het mogelijk om de effectiviteit van het strafrecht, een particulier recherche- en beveiligingsbedrijf, en een civiel straatverbod te verhogen en om (enkele van) de nadelen weg te nemen?*

Om de effectictiviteit van de besproken maatregelen te verhogen en de nadelen (deels) weg te nemen, werden verschillende aanbevelingen gedaan. In relatie tot het strafrecht werd aanbevolen om één strafdossier aan te leggen waarin alle incidenten nauwkeurig werden bijgehouden en om per zaak één contactpersoon binnen de politie aan te wijzen. Verder moet er een landelijk belagingsprotocol worden ontwikkeld dat op het Politie Kennisnet kan worden geplaatst. Ook moet overwogen worden om meer aandacht aan het onderwerp te besteden tijdens de opleiding op de Politieacademie en zou er een specifieke cursus moeten worden aangeboden. Deze cursus zou niet automatisch aan huiselijk geweld moeten worden gekoppeld, maar zou belaging *an sich* moeten behandelen. Bovendien zou de cursus aandacht moeten besteden aan de (soms afwijkende) behoeften van belagingsslachtoffers. Een nog betere – maar wellicht te dure – optie is om, naar Amerikaans voorbeeld, gespecialiseerde *anti-stalking units* te creëren. In de tussentijd zou het handig zijn om het onderwerp op de agenda's van de Veiligheidshuizen te plaatsen.

Vanuit de officieren van justitie zou er misschien eerder tot vervolging over kunnen worden gegaan (de gerechten lijken immers helemaal niet zo streng) en zou er geëxperimenteerd kunnen worden met het tussentijds afdoen en vervolgen van incidenten, terwijl diezelfde incidenten ook bij een latere vervolging wegens artikel 285b Sr. ten laste worden gelegd. De gewoonte van enkele officieren om wanneer mogelijk een (opschorting van de) voorlopige hechtenis te eisen moet worden gestimuleerd.

Met betrekking tot de particuliere opsporing en beveiliging werd nadrukkelijk aanbevolen om de naleving van de *Privacy gedragscode sector particuliere onderzoeksbureaus* te controleren en de gedragscode goed te handhaven. In de toekomst zou moeten worden bezien of slachtoffers eventueel in de gemaakte kosten tegemoet zouden kunnen worden gekomen.

In kort geding, tenslotte, verdient het aanbeveling om het uitgangspunt van 'automatische' compensatie in belagingszaken met een familierechtelijk karakter te verlaten. De kostenveroordeling van de verliezende partij is een helder en objectief criterium waar men in Nederland voor heeft gekozen en dit zou ook in belagingszaken moeten worden toegepast.

APPENDIX 1
English translation of the Tilburg Carnival questionnaire

Instruction

Below you will find 10 words that describe feelings. Indicate for each word how you feel **in general** (so not only today) by placing a circle around the number that describes your feeling best.

1=very little 2= a little 3= somewhat 4= much 5 = very much

1. upset	1	2	3	4	5
2. hostile	1	2	3	4	5
3. alert	1	2	3	4	5
4. ashamed	1	2	3	4	5
5. inspired	1	2	3	4	5
6. nervous	1	2	3	4	5
7. determined	1	2	3	4	5
8. attentive	1	2	3	4	5
9. afraid	1	2	3	4	5
10. active	1	2	3	4	5

Question 1: Have you ever been the target of persistent unwanted attention by someone else (stalking)?

☐ yes ☐ no

Question 2: During the past 12 months, have you experienced a serious or very unpleasant event? Multiple answers possible

☐ no
☐ yes, I have been involved in an act of violence
☐ yes, someone has stolen or deliberately destroyed something that belonged to me
☐ yes, I have been stalked
☐ yes, I have been in an accident
☐ yes, I have lost a loved-one
☐ yes, I was diagnosed with a (serious) disease
☐ yes, a loved-one of mine was diagnosed with a (serious) disease
☐ yes, I have lost my job
☐ yes, something else, namely …

E-mail address:

Civil status:

☐ married/ cohabiting with a partner
☐ single

Gender:

☐ male
☐ female

Date of birth:

Thank you for your cooperation!

APPENDIX 2
English translation of the stalking module in the police monitor

4.56 During your lifetime, has someone ever **repeatedly** harassed you by

- Following you or laying in wait for you?
- Calling you while you did not want this?
- Sending you unwanted letters or other items?
- Destroying your property or threatening to do so?
- Threatening to hurt loved ones or beloved animals?
- None of these
- Respondent does not wish to elaborate on this incident/these incidents

4.57 When there were several persons who exhibited this behaviour in your life, we ask you to answer the questions exclusively for the LAST person who did this. You have just said that during your lifetime you were once harassed by someone. How old were you when that started? *[if necessary, ask for an estimation]*

4.58 Did you feel threatened by the behaviour of this person?

- Yes
- No
- Does not know/ does not want to say
- Respondent does not wish to elaborate on this incident/these incidents

4.59 Is the person who exhibited this behaviour a man or a woman?

- Man
- Woman
- Does not know/ does not want to say
- Respondent does not wish to elaborate on this incident/these incidents

4.60 What was your relationship to the person when he or she started exhibiting the behaviour? At that time, the person was *[only ONE option possible]*

- Your partner
- Your ex-partner
- A stranger
- An (other) acquaintance, namely…
- Does not know/ does not want to say
- Respondent does not wish to elaborate on this incident/these incidents

APPENDIX 3
English translation of the victim support questionnaire

PART 1 (general information on you)

1.1. What is your gender?

- ☐ Male
- ☐ Female

1.2. What is your age? .... years

1.3. What is the highest level of education that you have completed?

- ☐ Technical and vocational training (12-16 yrs)
- ☐ Lower general secondary education
- ☐ Technical and vocational training (16-18 yrs)
- ☐ Higher general secondary education and pre-university education
- ☐ Technical and vocational training (18+)
- ☐ University

1.4. What is your current employment status?

- ☐ Employed
- ☐ Student
- ☐ Retired / early retirement
- ☐ Running the house or raising children
- ☐ Unemployed
- ☐ Sick / recipient of disabled insurance benefits

1.5. Do you have children?

- ☐ Yes, but the stalker is not the father/mother
- ☐ Yes and the stalker is the father/mother
- ☐ No

PART 2 (general information on the stalker)

2.1. Do you know who your stalker is?

- ☐ Yes
- ☐ No, it is an anonymous stalker > (continue with part 3)

2.2. What is the gender of your stalker?

- ☐ Male
- ☐ Female
- ☐ It is a group of people > (continue with part 3)

4.1. What is the highest level of education that he/she has completed?

- ☐ Technical and vocational training (12-16 yrs)
- ☐ Lower general secondary education
- ☐ Technical and vocational training (16-18 yrs)
- ☐ Higher general secondary education and pre-university education
- ☐ Technical and vocational training (18+ yrs)
- ☐ University
- ☐ Unknown

2.4. In your opinion, is the stalker addicted? (multiple answers possible)

- ☐ No
- ☐ Yes, to softdrugs
- ☐ Yes, to harddrugs
- ☐ Yes, to alcohol
- ☐ Yes, to gambling
- ☐ Unknown

5.5. Has the stalker ever been diagnosed with a mental disorder by a psychologist/psychiatrist?

- ☐ Yes
- ☐ No
- ☐ Unknown

5.6. How often has the stalker been in contact with the police (he/she received a warning, was arrested or convicted for a crime)?

- ☐ Never
- ☐ Once
- ☐ More than once
- ☐ Unknown

2.7. How do you know the stalker?

- ☐ The stalker is an ex-partner

- [ ] I know the stalker from work (colleague (former) employee (former) client, etc.)
- [ ] The stalker is an acquaintance (for example a friend, a hairdresser, etc.)
- [ ] The stalker is a stranger

2.8. If the stalker is an ex-partner, have you experienced psychological, physical or sexual violence during your relationship? (multiple answers possible)

- [ ] The stalker is not an ex-partner
- [ ] No, I have not experienced any violence
- [ ] Yes, physical violence
- [ ] Yes, psychological violence (e.g. excessive jealousy / possessiveness / criticism)
- [ ] Yes, sexual violence

PART 3 (information on the stalking)

3.1. Can you indicate when the stalking more or less started? (if you have been in an intimate relationship with the stalker, then only the period after the break-up counts, for example 'March 2003')

.... month .... year

3.2. Are you still being stalked?

☐ Yes (go to question 3.4.)
☐ No
☐ Unknown (go to question 3.4.)

3.3. When has the stalking stopped?

.... month .... year

3.4. Can you indicate which measures you have adopted in order to end the stalking? (multiple answers possible)

☐ I did nothing
☐ I ignored the stalker
☐ I took safety measures (e.g. an alarm)
☐ I changed my telephone number / e-mail address
☐ I moved
☐ I contacted the police
☐ I asked for a civil restraining order
☐ Other, namely ....

3.5. Do you have any idea of the motive behind the stalking? (multiple answers possible)

☐ The stalker wanted revenge
☐ The stalker wanted a relationship
☐ The stalker wanted the children
☐ The stalker wanted money
☐ Unknown
☐ Other, namely ....

3.8. Have you ever initiated contact with the stalker yourself?

☐ No
☐ Yes

3.9. Stalkers use various stalking tactics. Below you will find a list with such tactics. Can you indicate which of the stalking tactics you have experienced personally and how often **on average** you suffered from a certain tactic **before** you first came into contact with Victim Support?

		never	*less taan once a month*	*every month*	*every week*	*once a day*	*more than once a day*
1.	contact you through the internet/ by telephone / through letters?	☐	☐	☐	☐	☐	☐
2.	engage you in an unwanted conversation?	☐	☐	☐	☐	☐	☐
3.	give, send or leave behind unwanted items	☐	☐	☐	☐	☐	☐
4.	insult you or your loved ones? (e.g. call names)	☐	☐	☐	☐	☐	☐
5.	follow or spy on you? (e.g. on the internet or at your work)	☐	☐	☐	☐	☐	☐
6.	release information that was harmful to you?	☐	☐	☐	☐	☐	☐
7.	subscribe you to magazines/ news papers?	☐	☐	☐	☐	☐	☐
8.	cause damage to your or someone else's property?	☐	☐	☐	☐	☐	☐
9.	threaten you or your loved ones?	☐	☐	☐	☐	☐	☐
10.	physically injure you or your loved ones?	☐	☐	☐	☐	☐	☐

3.14. Persons who suffered from stalking sometimes show the following reactions. Indicate whether you have experienced the reactions below to a considerable extent as a result of the stalking.

	Yes	No
1. Upsetting thoughts or memories about the stalking that have come into your mind against your will	☐	☐
2. Upsetting dreams about the stalking	☐	☐
3. Acting or feeling as though the stalking was happening again	☐	☐
4. Bodily reactions (such as fast heartbeat, stomach churning, sweatiness, dizziness) when reminded of the event	☐	☐
5. Difficulty falling or staying asleep	☐	☐
6. Irritability or outbursts of anger	☐	☐
7. Feeling upset by reminders of the stalking	☐	☐
8. Difficulty concentrating.	☐	☐
9. Heightened awareness of potential dangers to yourself and others	☐	☐
10. Being jumpy or being startled at something unexpected	☐	☐

PART 4 (civil restraining orders)

Not reported

PART 5 (the police and the criminal justice system)

Since 2000 it is also possible to report stalking to the police. The following questions are related to this possibility.

5.1. Have you ever contacted the police to counter the stalking?

☐ Yes (go to question 5.3.)
☐ No

5.2. If you have not contacted the police, why not?
(multiple answers possible > after this question go to part 6.)

☐ I hoped that the stalking would stop without police interference
☐ I was afraid the police would not take me seriously
☐ I did not think it was serious enough to contact the police
☐ I did not want to stigmatise the stalker
☐ Due to previous bad experiences with the police
☐ I did not think that the police could be of any help
☐ I was afraid that the stalker would retaliate
☐ Other, namely ....

5.3. How many times have you contacted the police for help?
(including phone calls and visits to the police station)

..... times

5.4. If you have requested the police for help, how did the police react?
(multiple answers possible)

☐ They did nothing
☐ They pointed out the possibility of contacting Victim Support
☐ They did not take me seriously
☐ They gave me some general advice
☐ They gave the stalker a warning
☐ They removed the stalker from the neighbourhood
☐ They arrested the stalker
☐ They brought the case before a court of law
☐ They referred me to another institution
☐ Other, namely ....

5.5. Have you officially reported the stalking?

☐ No, I just contacted the police
☐ Yes, I officially reported the stalking (go to question 5.7.)

5.6. If you have not officially reported the stalking, why not?
(multiple answers possible > after this question, go to question 5.9.)

☐ I am financially dependent on the stalker
☐ I was afraid the stalking would deteriorate
☐ I did not want to stigmatise the stalker
☐ I did not have enough evidence
☐ The police advised against it
☐ The stalking had already stopped
☐ I was afraid the stalker would retaliate
☐ Other, namely ....

5.7. If your case did not go to trial, why not?
(multiple answers possible)

☐ They told me nothing could be done about it
☐ There was insufficient evidence for a trial
☐ I withdrew my complaint
☐ The stalking had already stopped
☐ The police tried to stop the stalking in an alternative manner
☐ Unknown
☐ Other, namely ....

5.8. If your case did go to trial, what was the outcome?
(multiple answers possible)

☐ The stalker was acquitted
☐ The stalker was sentenced to a suspended fine
☐ The stalker was sentenced to a fine
☐ The stalker was sentenced to a suspended community punishment order
☐ The stalker was sentenced to a community punishment order
☐ The stalker was sentenced to a suspended prison sentence
☐ The stalker was sentenced to a prison sentence
☐ The stalker was sentenced to a treatment (e.g. detention under a hospital order)
☐ Unknown
☐ Other, namely ....

5.9. Did the contact with the police and the possible ensuing criminal prosecution help reduce the frequency of the stalking (e.g. the stalker only calls once a week instead of every day)? Thanks to the contact with the police, I am stalked …

☐	☐	☐	☐	☐
no longer	less often	just as often	more often	much more often

5.10. Did the contact with the police and the possible ensuing criminal prosecution help improve the nature of the stalking (e.g. the stalker has switched to less bothersome or less serious behaviour)? Thanks to the contact with the police the stalker has switched to ….behaviour.

☐	☐	☐	☐	☐
much worse	worse	just as bad	less bad	much less bad

5.11. If you have noticed a difference in the stalking, within how much time after your first contact with the police did you notice this difference?

.....

5.12. Which advantages have you experienced in your contact with the police? (multiple answers possible)

☐ None
☐ I was treated properly by the police
☐ I was well informed of my case
☐ I was taken seriously as a victim
☐ It is easy to prove the stalking
☐ The police came into action swiftly
☐ It was nice to hand the case over
☐ Other, namely ....

5.13. Which disadvantages have you experienced in your contact with the police? (multiple answers possible)

☐ None
☐ I was not properly treated by the police
☐ I was not sufficiently informed on my case
☐ I was not taken seriously as a victim
☐ It is difficult to prove the stalking
☐ It took a long time before the police came into action

☐ The police did nothing
☐ It was dreadful being dependent on the police
☐ I was afraid the stalker would retaliate
☐ I was afraid to stigmatise the stalker
☐ Other, namely ....

5.14. Mark the alternative which is the most suitable.

1. Thanks/due to the contact with the police I feel .....about myself.

☐	☐	☐	☐	☐
much worse	worse	just as good/bad	better	better

2. Thanks/due to the contact with the police I feel .....

☐	☐	☐	☐	☐
much safer	safer	safer	less safe	much less safe

3. Thanks/due to the contact with the police I feel …. in control of the stalking.

☐	☐	☐	☐	☐
much more	more	just as much/little	less	much less

4. All in all, I am …. with the police contact.

☐	☐	☐	☐	☐
very satisfied	satisfied	neutral	dissatisfied	very dissatisfied

APPENDIX 4
English translation of the interview protocol for the victims of stalking

1) Can you describe what has happened to you? How did it happen? And what are, in your opinion, the most important facts of the case?

2) When did you report the stalking (for the first time) to the police and why (in reaction to what incident)? Did they allow you to report the stalking?

3) How often have you contacted the police? How often have you filed an official report?

4) How did the police treat you/ how have you experienced the treatment by the police?

5) How did the police react?

6) What did the police do (take down an official report, take down a notification, nothing, referral, etcetera)?

7) Did the police contact the stalker? Did this contact have a negative of a positive influence on the stalking? Has the stalking stopped after the police interference? If so, after which interference by the police?

8) What has eventually happened to your case (criminal prosecution, (conditional) dismissal, conviction, what (type of) penalty)? If your case was not brought before a court of law, why not?

9) Did you have one contact person with the police?

10) Were you kept informed of the important events/decisions of your case?

11) What did you expect of the police interference? Were your expectations met?

12) Were you referred to Victim Support?

13) What did you find positive and negative about the contact with the police / the police interference?

14) Did you have (unfulfilled) needs/desires? With what could they have helped you?

15) How can the approach of the police be improved according to you?

APPENDIX 5
English translation of the interview protocol for the practitioners

Within the framework of a PhD study into the effectiveness of the police and judicial approach to stalking 360 victims of stalking were questioned last year on their experiences with the police and the judiciary. From this questionnaire, several problems within the criminal justice chain surfaced. The idea now is to interview specialised police officers and public prosecutors to have a look at their experiences with these types of cases. The goal of these interviews is to map the current approach to stalking, to map the bottlenecks in this approach and to get ideas for a possible improvement of the approach.

Questions for public prosecutors:

1. Does your office have a special policy on stalking? If so, what does this policy entail?
   i. Is there a special (prosecution) protocol? If so, what does this protocol entail?
   ii. Is the policy – in accordance with the Domestic Violence Instruction (hereafter: DVI) – only applicable to victims who are being stalked by their ex-partner, family members or family friends, or is it also applicable to others?
   iii. Is stalking prioritised?
   iv. Is the victim kept informed on the progress of the case? Also on the reasons to abstain from prosecution? And of the time and conditions of the release of the suspect from custody? *(*DVI)
   v. Is number registration always retrieved in case of stalking by telephone? And are text messages always documented?
   vi. Are things in general well documented/recorded? Is a domestic violence case always earmarked (DVI)?
   vii. Is a suspect always arrested and brought before an examining magistrate when there are 'grounds' and 'serious grievances'? Does the examining magistrate generally grant the preventive custody? Is it often suspended? If so, under what conditions? Is the suspect on violation of the conditions always taken back in remand? (DVI)
   viii. In other cases, is the Arrest-Administer procedure used? (DVI)
   ix. Is a provable criminal offence always prosecuted? (DVI)
   x. In case of a dismissal, are an unconditional dismissal and an unconditional out-of-court settlement *(transactie)* avoided? (DVI)
   xi. Which penalties are generally demanded in these cases?
   xii. Is a restraining order always demanded in addition to the principal penalty? Do courts follow that demand?
2. If there is no special policy, how exactly is stalking dealt with momentarily? (see questions iii to xii)
3. Are the public prosecutors and the prosecutor's clerks in your office specifically trained in dealing with cases or victims of stalking?
   i. If not, why not (yet)?
   ii. If so, what does this training entail (An information and publicity day? Recurring cours-

es? A team that specialises in domestic violence and/or stalking?)? Is stalking always automatically linked with domestic violence in this training or is it dealt with separately? Does it deal with the prosecution of stalking and/or does it also take the contact with victims into account?

4. Stalkers can roughly be divided into ex-partners, acquaintances/family/friends or strangers. Do these groups receive different treatment? Is a certain group more or less prioritised within your office?

Questions for police officers:

1. Does your region have a special policy on stalking? If so, what does this policy entail?
   i. Is there a special (investigation) protocol? If so, what does this protocol entail?
   ii. Is the policy – in accordance with the Domestic Violence Instruction (hereafter: DVI) – only applicable to victims who are being stalked by their ex-partner, family members or family friends, or is it also applicable to others?
   iii. Is stalking prioritised?
   iv. Is the victim stimulated to file for a report (file a complaint)? (DVI)
   v. What happens if the victim does not wish to file a report? (E.g. advice or referral to victim support)?
   vi. Is the victim advised to take safety measures?
   vii. Is the number registration always retrieved in case of stalking by telephone? And are text messages always documented?
   viii. Is the stalker always contacted and does he/she receive a warning?
   ix. Does the report always state whether the victim wishes for a restraining order? (DVI)
   x. Is the address of the victim kept out of the report if so desired? (DVI)
   xi. Is a suspect immediately arrested in case of a reasonable suspicion of guilt when he/she is caught in the act? (DVI)
   xii. When the suspect is not caught in the act, is he/she arrested as soon as possible at the permission of the public prosecutor? (DVI)
   xiii. In case a preventive custody is not possible, is the suspect summoned to the police station? (DVI)
   xiv. Is the stalker arrested/detained whenever possible?
   xv. Is one contact person assigned to the case?
   xvi. Are things in general well documented/recorded? Is a domestic violence case always earmarked (DVI)?
   xvii. Is the victim kept informed on the progress of the case? *(*DVI)
   xviii. Is the report automatically sent over to the Public Prosecution Service or is the case first judged on its merits by the police? Are all reports brought before an assistant prosecutor as soon as possible?
2. If there is no special policy, how exactly is stalking dealt with momentarily? (see questions iii to xviii)
3. Are the police officers in your office specifically trained in dealing with cases or victims of stalking?

i. If not, why not (yet)?
ii. If so, what does this training entail (An information and publicity day? Recurring courses? A team that specialises in domestic violence and/or stalking?)? Is stalking always automatically linked with domestic violence in this training or is it dealt with separately? Does it deal with the prosecution of stalking and/or does it also take the contact with victims into account?

4. Stalkers can roughly be divided into ex-partners, acquaintances/family/friends or strangers. Do these groups receive different treatment? Is a certain group more or less prioritised within your office?

Questions for both the police and the public prosecutors:

From the victim survey and from a literature review several problems surfaced on different levels. The victim him- or herself can handle things incorrectly, but the police and the Public Prosecution Service can make mistakes as well. Sometimes the legal requirements of Article 285b DCC or the attitude of the courts are perceived as troublesome.

5. In your opinion, what are the bottlenecks on the level of:
   i. The victim?
   ii. The police?
   iii. The Public Prosecution Service?
   iv. The courts?
   v. The legal provision?

[First wait to see what bottlenecks the respondent comes up with spontaneously, then confront him or her with often heard complaints, such as the sometimes ambivalent attitude of the victims, the inaction of the police, etcetera. How does the respondent feel about these issues? Are there possible 'justifications' for the complaints?]

6. Are there other bottlenecks that we have not dealt with yet?
7. In your opinion, what is the biggest problem in the approach to stalking?
8. In your opinion, what is the most effective reaction from the police or the judiciary to stalking?
9. What is a reaction that could possibly make the stalking worse?
10. In what way could the (police and judicial) approach to stalking be improved?

APPENDIX 6
Description of the 26 cases dealt with by SCBN

Case history 1

The 19-year-old female victim was stalked for three months by her former boyfriend whom she had been dating on and off for four years. Despite his relatively young age – the man was only 20 – he had already built up an impressive criminal record. Unable to accept the break-up the man started calling the victim and contacting her through MSN. His messages ranged from death threats or threats with rape to sad love letters. He also took on waiting for the victim outside her home and place of work and he physically followed her around. Soon his behaviour escalated even more, and after he had falsely accused her of theft and had threatened her family and employer, he physically assaulted the victim. As a result, the victim experienced fear and she was suspended from work. When numerous attempts by the victim to end the stalking herself – like asking him to stop his conduct, changing her telephone number and going into hiding at her father's place – remained in vain, she decided to contact the police. Notwithstanding the abundance of letters and witnesses, the police decided not to file a report for the evidence was not 'hard' and the letters 'not threatening enough'. They did develop a protocol which would be installed once he started seriously harassing her again and one time they summoned the perpetrator to leave the victim alone – an advice that was ignored by the man. Discontent with the police (in)activity the victim contacted the foundation and already after their first standard notification the man stopped.

Case history 2

This case does not contain much information, probably due to the fact that the intervention was stopped prematurely. The only facts that could be retrieved were that it concerned a male victim who was stalked by a female ex-employee. He and his wife received telephone calls and letters. Despite their initial consent to have the case investigated by the foundation, the man soon started hampering the intervention by having his lawyer check upon the foundation. After this the foundation did not hear from the couple again. The man's diligence to check upon the foundation might have had something to do with the fact that very soon evidence started emerging which showed that the man had had an affair with the stalker in question.

Case history 3

This female victim ended the relationship with her boyfriend after he was convicted for domestic violence. As a result of the break-up, the man switched from domestic violence to stalking instead. Amongst other acts, he sent her threatening e-mails and letters, he placed libellous messages on internet sites, he called her (up to 300 times a day), and he kidnapped her dog. After repetitive notifications from the foundation and filing a report with the police, the man finally ceased harassing the woman. With the help of the foundation, the libel was removed from the internet. They also helped the victim to initiate a civil procedure to recover the costs

for the intervention and other damages she had suffered from the stalking incidents. The civil procedure, however, backfired. Although the judge did have the impression 'that something was going on here', she still considered the evidence insufficient to prove the stalking and to warrant damages. In the end, she even ordered the victim to reimburse the procedural costs to the stalker.

Case history 4

This male victim was stalked by his ex-wife for approximately six weeks after their marriage had ended. Contrary to the agreement, she kept entering the conjugal home by using a spare key. Once she had gained entrance, she repetitively collected personal belongings of the man, she stole letters that were addressed to him, and she turned over his house. Libellous e-mails were sent, not only to the man himself, but also to third parties, and she placed unpleasant messages and pictures on his web log. When a few items were stolen from his car the suspicion fall upon the ex-wife and this made the man get into contact with the foundation. After a notification the incidents stopped completely.

Case history 5

This 42-year-old woman had been stalked for nearly two years by an anonymous stalker when she decided to contact the police in 2005. She had received silent telephone calls (up to 15 calls a day) and cards with hurtful remarks on the vascular disease the woman suffered from – a detail which made her suspect that the stalker had to be someone in her vicinity. Furthermore, the stalker ordered countless goods from mail-order companies in her name, the stalker subscribed her to various (erotic) magazines, and the stalker sent a notice of leaving to her landlord. Over the years, the affair had drawn such a heavy burden on her mental state that the victim and her family even went to see a psychiatrist. The police placed a 'catcher' on her telephone hoping to expose the perpetrator, but their attempt remained in vain. In the end, the victim turned to the foundation. This case became one of the most labour-intensive files they had ever worked on. For two-and-a-half years the investigators had tried various ways to reveal the stalker's identity. They had a glass tested for DNA traces, they had a handwriting analysis performed on several letters, they wrote to family and friends for information, and they held the victim's home under observation for some time, but nothing worked. The investigation did strengthen the suspicion against a certain person (the stalking diminished after they had sent out some letters), yet there was no hard evidence. Every now and then the woman still receives things from the stalker and the case is not closed yet.

Case history 6

One of the most successful cases actually involved two stalkers. After a marriage of 32 years this 56-year-old female victim filed for a divorce and it was after this that the stalking by her 58-year-old ex-husband began. He called her repetitively and if she did not pick up the phone he would utter death threats to their daughter to make sure she would get the message. He hung

around her house, he bashed her window, and he threw a paint bomb through her mailbox. As a result, the victim not only suffered from sleeplessness, fear, and heart palpitations, but she also had to undergo a medical test after he had lied to her that he had infected her with a sexually transmitted disease. Her contacts with the police were not very successful. The only report (out of six) that was taken up by the Public Prosecution Service was dismissed, because criminal prosecution was considered disproportionate. After having put up with this for over one-year-and-a-half, the victim arranged to have a civil restraining order imposed against her ex-partner. At first, this order did not appear very effective. Instead of the physical presence of her ex, the victim now received harassing e-mails (one day she received 172 mails) and text messages. She got subscribed to magazines, several debt-collection agencies knocked on her door, and libellous messages appeared on the internet. But when her lawyer wanted to enforce the court order and claim the liquidated damages, the man denied having committed these acts. It was only after an investigation of the foundation that they discovered that the new partner of the ex-husband was responsible for the most recent acts. In hindsight, the restraining order had been effective, at least as far as the ex-husband was concerned. The new girlfriend, who acted out of revenge, confessed to the stalking after a notification of the foundation and the stalking has stopped ever since. With the help of the foundation the victim even had an amount of €1500 awarded to her by the *Schadefonds* for the damage she had suffered.

Case history 7

This 39-year-old female victim was stalked for over twelve months by her ex-partner after a relationship of approximately seven years. Out of vengeance and a wish to restore their relationship the man called her, he threatened to harm (or even kill) her and her relatives, he lingered outside her home, he confronted her in person, he sent her postcards and other unwanted products, he insulted her, he distributed nude photographs which portrayed the victim, and he told friends and relatives that she was a junkie who made a living by prostituting herself. She had to endure his harassment for six times a week on average. Consequently, the victim feared for the safety of herself and others and she felt a prisoner in her own home. Following a report with the police that had remained without consequence, she sought for help with the foundation. In reaction to their notification, the stalker wanted to have a conversation with the investigator. During this tumultuous conversation the investigator managed to have the man agree on leaving the victim alone. When the stalker did not live up to this arrangement, the foundation decided to compile evidence to support a police investigation. They observed the victim's house twice and both times caught the stalker lingering around. Furthermore, they recorded several threatening phone calls and they wrote down the statements of eyewitnesses. On her return to the police, however, their only advice was to 'change the telephone number' so that 'she would not be bothered anymore'. The foundation, hereupon, decided to hand the case over to a related law firm that started civil interlocutory proceedings. As a result, the stalker was ordered not to contact the victim or enter her street for the period of one year on penalty of €2500 per violation. The victim has not experienced any stalking by the perpetrator ever since.

Case history 8

This 44-year-old woman had been receiving threatening letters, postcards, e-mails, and telephone calls by an anonymous stalker for one year when she contacted the foundation. The unknown person had also subscribed her to magazines and made her receive unwanted goods from mail-order firms. The victim had contacted the police, but despite their promise to return her phone calls they never did. When someone had thrown excrements through her letter box they refused to take down a report, but they advised her to look for psychiatric help. Their literal words were: 'If it's dirty just throw it away. There's nothing we can do with it anyway.' Although the investigators at the foundation did notice that the woman came across as 'rather unstable', they decided to take on the case nevertheless. After a comparison between the handwriting on the postcards and that of four suspects the investigators established the identity of the stalker. It turned out that her former employer had taken on stalking the victim out of frustration for his unrequited love. It took two notifications to end the harassment.

Case history 9

After meeting a 56-year-old man through an internet dating site and maintaining a relationship with him for nine months, this 54-year-old woman decided to end the affair after she found out he was still married to another woman. Following the break-up, the man claimed that the woman still owed him money and he sent her false invoices. Although the text messages, e-mails, threats, insults, slanderous allegations, and letters to a newspaper initially were related to the money, his behaviour exceeded the crime of extortion when he also started hanging around her house, assaulting her, and showing up at places. During the one-and-a-half year that the woman was targeted, she tried several coping strategies, such as ignoring the man, keeping a log, reporting him to the police, and having him sign an unofficial restraining order, but nothing helped. The case was finally settled when the foundation wrote the man that investigation had shown the invoices to be forged. Either he could hand over real invoices, or he could stop his behaviour. The man chose for the final option.

Case history 10

When a 53-year-old female volunteer got suspended from working in a large international religious foundation, she started writing hundreds of libellous e-mails to the contributors of the foundation, to the direction of the foundation, and to the director himself. She accused him of having battered his former wife, of having acquired the services of prostitutes and of having used donations for his own benefit. She often took on a false identity when distributing these accusations and she threatened to make the scandalous information public through the media. The man had unsuccessfully tried several options to make the woman stop her campaign, but they only seemed to aggravate matters. The foundation decided to gather as much evidence as possible in order to support a criminal investigation. After they had retrieved the woman's address, they sent her a notification, they looked into her background, and they investigated her titles. A handwriting analysis linked her name to the letters that were written under a false

identity. Following the hearing of several witnesses, the case was handed over to the police, who found no less than 5400 e-mails on her computer that were related to this case. The police brought the woman in and had her sign a declaration stating that she would no longer engage in making threats or she would be fined. In an attempt to restore the victim's reputation, the foundation wrote a letter to the contributors explaining the situation. The case is still ongoing.

Case history 11

A case that relied heavily on the memory of the investigating detective, was the one in which a woman was stalked by her ex-husband. No data could be retrieved on what the stalking exactly entailed, only that the man was accused of 'stalking, assault and threat'. On the same day that the woman accepted the tender the foundation sent a notification to the suspect. Agitated by this notification, the man in turn went to the police file a report against the foundation. The police, who had been working on this case for over a year and who had talked with the man several times, called the foundation to ask for a clarification. When the investigators explained the situation, the police did not seem very appreciative of the foundation's involvement. Despite the quarrels between the police and the foundation, the man has stopped bothering the woman ever since the notification.

Case history 12

In this case the trouble started when a lesbian couple started renting an apartment from their male landlord who lived next door. Very soon after closing the deal the couple caught the landlord illegally trimming their Russian vine. A little later, the couple noticed that he had a habit of entering their premises multiple times a day without their consent or any apparent reason. He also kept bothering them with notes and telephone calls, some of a very threatening nature. He had requested them several times to move and his request was supported by an irrepressible flow of real estate leaflets left behind on their stairs or in their letter box. He furthermore warned their business relations of the couple's 'bad behaviour' and had once put a debt-collection agency on them. His latest invention was to place a garden gnome in their garden and move it every other day to a different location. A video camera directed at the couple's letter box showed that he was also in the habit of snooping through their personal mail. Numerous conversations, letters, and meetings under the supervision of a lawyer were ineffective, as were the interference of the municipality and the policeman on the beat. Ever since the notification of the foundation, however, matters have calmed down and the landlord has not contacted the tenants again. The foundation is still thinking on a possible legal follow-up.

Case history 13

When this woman offered a gadget for sale on the internet for €50, she could never have suspected the far-reaching impact this would have on her life. The woman who bought the gadget claimed that she had never received the package and she requested her money back. The victim refused to do so, because she distrusted the woman's story. Following her refusal

the victim received several unsolicited, anonymous packages. Then one day a man – probably the boyfriend of the unsatisfied customer – called her saying she had better restore the €50. The woman denied the claim and – again – refused to pay the money after which accusations of fraud appeared on various internet sites. The man contacted her friends and colleagues and even informed her employer. Because of the accusations, the victim was temporarily suspended from work. A report of libel to the police and the payment of €50 did not stop the man from his libellous activities, despite the fact that he had signed a declaration thereto. When the foundation was brought in, they began to focus on damage control. They first explained the situation to her employer who put the woman back to work again. Then they contacted various webmasters to have the libel removed from their sites. Simultaneously, they commanded the man to stop twice. Despite these attempts the man kept placing messages on the internet and contacting the victim's friends. The foundation has now connected the woman to one of their lawyers who will try to initiate interlocutory proceedings against the man. The victim also has the intention to press (stalking) charges against the man.

Case history 14

This 37-year-old man was stalked by his former girlfriend for only two weeks when he already decided to resort to the foundation's services. After being together for nine years in which they raised a daughter, the woman could not accept the man's wish to terminate the relationship. For reasons of vengeance she started stalking the man. The first stalking tactics consisted of libellous letters that were sent to the man's employer and his parents. Furthermore, she called and mailed the victim every day, and there is also a report of her physically attacking the man. After the foundation had sent a notification the stalking stopped.

Case history 15

This case lacks a lot of information. When the case was reported to the foundation by the end of 2006, the female client had been harassed for the past two years by means of anonymous, threatening phone calls, e-mails, and text messages. She received approximately ten text messages per evening. The soundings that were taken by the police, to track the mobile phone that the messages were sent from, pointed directly to a row house where the ex-boyfriend and two former (female) friends of the victim resided. The suspicion then arose that one of these friends was the instigator of the harassment. However, when the suspect kept denying after the police had arrested and interrogated her, there was insufficient evidence to start prosecutions. A notification sent by the foundation could not produce any effect either. Up to this day, the foundation is still reading the e-mails and trying to build the case.

Case history 16

This 43-year-old man was stalked by his former girlfriend after a relationship of seven years. The break-up was far from clean and the arrangements concerning parental access even had to be established in a civil procedure. The situation took an even grimmer turn when the

ex-wife started blackmailing the man. She demanded more alimony for else she would start another lawsuit. After his refusal the stalking commenced. On a daily basis she threatened the man, she called, mailed, followed him around, came over to his home, physically attacked him, wrote letters, and sent postcards. In addition, she was constantly trying to withhold their son from seeing his father. The stalking culminated when she falsely accused her ex-partner of physically abusing their son. After an investigation, the Child Welfare Council concluded that these accusations were false, but the experience left a lasting impression on the man. To stop her quest for revenge the man had tried everything, including a resort to the police, but the latter refused to take down a report. The last, sad report is that the woman has vanished together with their son. The foundation tried to retrieve the new address of both the mother and the son, but that attempt remained in vain.

Case history 17

This female victim worked in a nightclub and was harassed by an anonymous stalker through telephone and e-mail. After the foundation had unsuccessfully tried to discover the identity of the stalker through an investigation into the mobile numbers, observations, and an arranged appointment between the suspected stalker and the victim (a scheme that the victim abandoned at the last minute) the victim got restless when after two weeks this had not resulted in any positive changes to the stalking. She requested for a specified bill after which the file was officially closed. The victim contacted the foundation several times afterwards, also because by that time she was stalked by a different person, but each time she lacked the perseverance to await the results of the investigation.

Case history 18

Another illustrative case that required special attention was the one where a man was being harassed by his former girlfriend. After they had broken up she called him continuously, she text paged him, and she did everything she could to remain within his immediate vicinity. Since they had been long time friends, even before the relationship went sour, the man specifically desired to stop her intrusive conduct without destroying their friendship. A notification in his name containing a complaint against her behaviour would probably damage their friendship altogether so another approach was sought for, one where the man could stay anonymous throughout the procedure. An assessment of the case led the investigators to the conclusion that she probably had too much time on her hands and a regular job might distract her enough to keep her from stalking her ex-lover. However, being a person suffering from borderline personality disorder who had been convicted twice already for similar behaviour, she had found it hard to find employment. The investigators decided to contact the woman under the guise of being social workers who were assigned to help convicted people with borderline personality disorder to looking for a job. After they had gained her confidence and helped her find an occupation she ceased harassing the man.

Case history 19

After a tumultuous relationship of 14.5 years in which domestic violence had occurred, the 58- year-old woman broke up with her male partner of 48 years. Due to a sum of money the victim supposedly owed the man, he quickly had recourse to classical stalking tactics like daily telephone calls, text messages, and letters. These tactics were complemented by posting in front of her house, making threats, scolding, and publicly insulting the victim. He also had her property seized, he had summoned the victim to court, he had thrown bricks at her windows, he had soiled her house with urine, and on three occasions he had damaged and broken into her car (although this was never proven). Seeing her life reined by fear, the victim had tried various resources to put an end to the stalking (e.g. switching telephone numbers, reporting the man to the police), all to no avail. When the foundation was brought in they contacted the policeman on the beat – a man who had shown an active interest in her case – and they agreed upon a division of labour between the police and the foundation: the policeman contacted the stalker and had him agree to leave the woman alone, the foundation would keep a close eye at the man's compliance with the arrangement. Simultaneously, the woman initiated civil interlocutory proceedings in which both parties agreed that the victim would pay the man €5000 in order to be left alone. Despite these arrangements, the man was recently caught lingering in her garden again. The latest news was that the Public Prosecution Service would start a criminal prosecution.

Case history 20

After a very violent marriage, this 40-year-old mother finally decided to put an end to the relationship with her 37-year-old boyfriend. Following the break-up he started threatening the victim, he stole her property, he distributed nude photographs, and he drove past her house. At another occasion, he poured a flammable liquid over her car and threatened to set it on fire, an event that two police officers were able to witness. Due to these events the victim was forced to move and she had lost her entire social network. Despite three reports, the police thought there was insufficient evidence against the man to start investigations. Just when the foundation had planned to set up a meeting with the man, he was arrested for robbery and sent to prison for a period of four years. Naturally, the woman felt immensely relieved. Little did she know that during his first weekend on conditional parole he would look her up again. Although the stalking case is still not brought to a closure – until the man is released from prison it is uncertain what he will do – the private investigators could help the woman by mediating between her and her old housing agency. Thanks to the foundation they provided her with a certificate of good conduct. They, furthermore, instructed the victim's mother, who was still in contact with the stalker, not to give away the victim's contact information. As soon as the man is released from prison, they will send him a notification.

Case history 21

In this case, a father suspected that one of his sons (A) together with his wife and two children were being stalked by the other son (B) and his partner. Despite the fact that the numerous threats and the libellous messages on the internet drew a heavy burden on his (family) life, son A was reluctant to undertake action to stop the harassment. It was the father who contacted the foundation. The foundation first performed an investigation to identify the person posting the threats – after all, the father only had suspicions hitherto. Thanks to the investigation they were able to establish that the person behind the threats was son B's partner. After this discovery, they initiated a meeting between the father, son B, and one of the investigators as a mediator. Son B, who had never engaged in any stalking actions himself and who had not the slightest idea of his girlfriend's misbehaviour, was shocked when confronted with the evidence. He promised to have a word with her and to keep a close guard to ensure she would refrain from her activities in the future. This arrangement turned out not only to be very effective – family A has not heard from the woman ever since – but it also kept the family relationship intact.

Case history 22

In case 22, a female ex-colleague of the male victim had placed libellous messages on the internet, accusing the man of the sexual abuse of minors. It was not long after these publications that the man received threatening text messages and phone calls from various anonymous persons, and one day his car got treated with a chemical substance. The (psychological) consequences for the victim were immense. He was afraid to leave his house and he ended up being overworked. After a desk research of the internet, the foundation decided that the best way to stop the anonymous stalkers was to make sure the libellous allegations would disappear from the net. However, before the foundation could take any action, the provider had already removed the website in response to the request of a third party. Ever since its removal the victim has not experienced any problems anymore.

Case history 23

A very spectacular case that even involved the Dutch Secret Service *(AIVD)* was case 23. The file did not contain a lot of information as regards the actual stalking. The only thing that could be retrieved was the remark that the foundation would contact the ex-husband with the request to stay away from the female victim and her family members, after which they would start with the protocol to keep him out of her direct environment. The investigator in charge confirmed that this was a case of stalking. When the foundation accepted to help the woman, they soon discovered that the man had made considerable donations to controversial mosques in New York that were being watched by the CIA. It was then that the investigators decided to refer the case to the AIVD. Although the case was officially passed on to the AIVD, the victim called the foundation one more time to inform them that the man had visited her home again. They warned the police that the man was a *persona non grata*, but the police did not believe this. The last entrance in the file was that the women had temporarily found refuge with a relative.

Case history 24

This case evolved around a man who heard suspicious noises during the night and who saw strange people lingering in front of his premises when his wife was out for work. He was afraid that he had fallen victim to 'gang stalking'. The foundation passed the case over to one of the related private investigation companies that had a camera placed in front of his house. During one night they also had an investigator watch the place. Very soon these measures brought to light that the noises were unintentionally caused by the boy next door and that (gang) stalking was out of the question. Instead of being relieved, the man was infuriated by the foundation's decision to stop the investigation. The investigator who had met with the man during the intake believed that the man suffered from paranoid delusions and that he 'saw ghosts'.

Case history 25

This case involved a famous Dutch celebrity. This male singer was stalked by a female admirer who wanted the singer to fall in love with her. She did everything she could to stay within his vicinity: she went over to his house, she wrote love letters, she contacted his family and friends, and she attended all his concerts during which she behaved a little 'too affectionate'. After receiving a notification by the foundation and one personal conversation with one of the investigators, the woman ceased the pursuit of her idol completely.

Case history 26

A case that the foundation was still working on at the time of the case file study involved a male drama teacher who was unemployed and who had difficulties letting go of his former girlfriend. The girl – who still lived at her parents' place – received numerous letters, e-mails, cuddly toys, and telephone calls. His messages were sometimes of a threatening, other times of an affectionate nature. Just when the parents were preparing their luggage to go on holiday, the man threw a brick through their window. When the girl was away on holiday, he even went over to her uncle to ventilate his anger. The foundation immediately sent out a notification demanding the man to stop his conduct, but so far this did not have the desired effect. It did cause the man to partly divert his attention to the foundation. He called several times to the foundation's voicemail shouting obscenities and they received two messages on their website.

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(Footnotes)
1 Lower vocational technical education stands for *lager beroepsonderwijs (12-16 yrs)*; lower general secondary education stands for *mavo (or ulo / mulo / vmbo)*; senior secondary vocational education stands for *middelbaar beroepsonderwijs (16-18 yrs)*; higher general secondary education and pre-university education stands for *havo / vwo (or mms / llbs)*; higher professional education stands for *hoger beroepsonderwijs (18-22 yrs)*; and university education stands for *wetenschappelijk onderwijs*.